

**DR. SAMUEL PEACOCK  
HIS CONVICTION AND ACQUITTAL OF MURDER  
IN EAST MELBOURNE**

**East Melbourne Historical Society  
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***Introduction***

Nearly 100 years ago East Melbourne received a great deal of publicity, not because of its fine people or its fine buildings or its parks or its streets, but because Dr. Samuel Peacock of East Melbourne was charged with the murder of one of his patients, Mary Davies. It was alleged that Dr. Peacock performed an abortion upon Mary, that she died either during or shortly after the abortion, and that he disposed of her body.

***The main characters***

**Mary Davies** was 27 years old. She lived with her parents in South Melbourne, although a year before her father had been a publican in Ballarat.

Mary is described in the law reports as “a woman in a certain condition”, meaning that she was five months pregnant when she entered Dr. Peacock’s hospital on 9 August 1911. She represented herself to Dr. Peacock as Mrs. Nelson, a false name, and she wore a wedding ring. In fact, she was not married.

She was at Dr. Peacock’s hospital for between seven and fourteen days, depending upon whose version of events is to be believed. After she left the hospital, dead or alive, she was never seen again.

**Clifford Poke** was the main witness for the Crown, and his surname gives a clue to his role in the case. He was 21 years old, and had lived as a boarder with Mary’s parents, with obvious results. The law reports describe Clifford as having been “intimately acquainted” with Mary, and “responsible for her condition”.

**Dr. Samuel Peacock** was 72 years old, having been born in Ireland in 1839. He gained his medical qualifications at Glasgow University and at the Royal College of Surgeons in Edinburgh, but two years later in August 1872 he arrived in Melbourne. Interestingly, he practised at Bundoora for two years and then in Fitzroy until the year 1900.

In 1900 Dr. Peacock started to practise in East Melbourne, and in 1902 he built Eastbourne House, where he continued to practise until about 1919 when he would have been about 80 years old. He was married, but he did not have any children.

***Eastbourne House***

**Eastbourne House** is on the corner of Wellington Parade and Simpson Street, and appears to this day always to have been called “Eastbourne House”. It is occupied by

the Australian Democrats and a few other tenants, although a prominent “For Lease” sign presently indicates that the building is not fully occupied.

The building is classified by the National Trust. It is a two storied building of 16 rooms, and has a large balcony that overhangs Simpson Street. It was used by Dr. Peacock both as a residence and as a hospital solely for female patients.

### *The charge of murder*

Dr. Peacock was charged with the murder of Mary Davies. It was accepted when the case reached the High Court that there were three main possibilities:

First, that Dr. Peacock performed an abortion upon Mary, and that she died either during the course of the operation or as a result of the operation. At the time abortion was a serious crime in virtually all circumstances. Dr. Peacock was charged with the murder of Mary, and causing death in the course of the commission of a serious crime, namely an abortion, was murder as a matter of law, even though obviously there was no intention to kill Mary.

That was the case alleged by the Crown;

Secondly, that Mary entered Dr. Peacock’s hospital for treatment, that she had a miscarriage other than as a result of an abortion performed by Dr. Peacock, and that she died.

That was the scenario strongly suggested by Dr. Peacock’s counsel at his second and third trials, interestingly after the High Court had accepted it as a possible sequence of events. It was also suggested to the jury at the second and third trials that Mary may have attempted to abort the child before consulting Dr. Peacock, and that she might have died at Eastbourne House as a consequence of interference by a persons or persons other than Dr. Peacock;

Thirdly, that Mary entered Dr. Peacock’s hospital because she was unwell, that no operation of any kind was performed by Dr. Peacock, that treatment led to recovery, and that she went away well.

That was the case put forward by Dr. Peacock in an unsworn statement at each of his three trials, although particularly at his first trial.

Dr. Peacock was a canny Scot. He hedged his bets and he knew when to keep his mouth shut. At the second and third trials, his counsel suggested that Mary might have died as a result of a miscarriage that came about other than as a result of an abortion performed by Dr. Peacock, despite the fact that the theory did not sit comfortably with Dr. Peacock’s unsworn statement that Mary recovered and went away well. But, of course, the onus is upon the Crown to prove its case beyond reasonable doubt, not for the defendant to prove his innocence.

I will ask all of you at the end of this paper whether you would have found Dr. Peacock guilty of the murder of Mary Davies.

Before coming to the evidence given on behalf of the Crown, I will mention the various court proceedings that dealt directly with the charge of murder.

Dr. Peacock was charged with murder on 30 August 1911. His first trial took place in October 1911 and he was found guilty. The Full Court of the Supreme Court heard an appeal during November 1911 and dismissed it. Dr. Peacock then appealed to the

High Court. The High Court heard the appeal in November and December 1911. It allowed the appeal and ordered a re-trial.

The second trial took place in on 20, 21 & 22 February 1912, and the jury failed to agree. A third trial took place only three days later (which included a weekend) on 26, 27 & 28 February 1912 and Dr. Peacock was acquitted.

The period between the date upon which Mary entered Dr. Peacock's hospital and the conclusion of all those hearings was less than eight months. In fact, there were even more related hearings during that period of eight months.

There was a bail application to justices of the peace on 30 August 1911, when bail was refused. There was a bail application to the Supreme Court the following day, when bail was granted.

In September 1911, about a week after he was charged with murder, Dr. Peacock also brought contempt of court proceedings against the editors and the publishers of *The Age*, *The Argus* and *The Herald*, and most of them were found guilty. As might be expected the editors and publishers who were found guilty appealed to the High Court, although the High Court dismissed the appeals in March 1912. The appeals would have been heard earlier, but the High Court decided to await the outcome of the second and third trials.

All within eight months! These days a case of that kind probably would be spread over a period of about four years.

### ***Clifford Poke's report to the police***

Clifford Poke was the main witness for the Crown. He went to the police to report that Mary was missing, and he only told the full story to the police after they threatened to charge him with an offence.

Clifford Poke told the police that he tried to raise 25 pounds for Mary to give to Dr. Peacock, initially without success, but on the day that Mary was admitted to hospital Clifford gave her 25 pounds that had been raised by Clifford's friend Sydney Lack, Clifford also admitted that he was involved generally in the making of arrangements with Dr. Peacock.

Clifford admitted that, at first, he had informed Dr. Peacock that he was Mary's husband, which he was not. He said that he visited Mary in hospital on 10, 13 & 15 August 1911 when she appeared to him to be in good health. She told him on 10 August that she had undergone an operation. He saw her again on 17 August when she appeared to him to be "drowsy and pale", but he never saw Mary again. He said that Dr. Peacock informed him on 17 August that Mary had absorption of poisoning which used to be called puerperal fever.

Clifford visited the hospital on 18 August, but was not allowed to see Mary. He said that Dr. Peacock told him that Mary was very ill. During that visit, according to Clifford, he told Dr. Peacock that he was not married to Mary, and Dr. Peacock told him not to come to the hospital again.

Being told not to come to the hospital did not deter Clifford. He came again on 20 August, and was told that Mary was "slightly better". He came again on 21 August, and was told that "Things are as bad as they possibly can be". Again according to Clifford, Dr. Peacock made arrangements to meet him at the Fitzroy Gardens the next

evening, 22 August. Why they needed to meet at the Fitzroy Gardens at night in winter was not explained.

When they met at the Fitzroy Gardens on 22 August, Dr. Peacock told Clifford “She is dead”. According to Clifford, Dr. Peacock said that Mary had a fit of screaming, that he administered chloroform to quieten her, and that she died. They then discussed the disposal of her body. [As you do in the Fitzroy Gardens in winter.] Dr. Peacock said that he could have Mary secretly buried, and that he could burn Mary’s belongings at his farm at Carrum. He also told Clifford “to keep his mouth shut”.

### ***The police raid***

Having told his story to the police, Clifford returned to the hospital during the evening of 29 August, while the police lay in wait outside. Dr. Peacock told Clifford that he had buried the body and burned the clothes. Clifford said he would like to keep some of Mary’s jewellery as a keepsake, but Dr. Peacock said that he had also disposed of the jewellery. Poke then went outside and reported to the police.

The raid by the police is best described in the words of The Argus:

Inspector O’Donnell took Poke at 8 o’clock on Tuesday night, in company with Detectives Coonan, Lonsdale, Sainsbury, Mulfahey, Murray, Tognini and Hawkins, to Dr. Peacock’s house. Poke entered the house, and, returning, said “Dr. Peacock told me that he buried the body secretly, burnt the clothes, and made away with the jewellery.” At 9 o’clock the detectives were admitted to the house. In reply to a question, Dr. Peacock said that Mary Davies was not there. A search of the house, which is two-storied, and contains 16 rooms, was begun.

Dr. Peacock at first denied that Mary or Mrs. Nelson had been in his hospital, but when the police found a letter of consent in Dr. Peacock’s desk, signed “C. Nelson”, (the “C” presumably standing for Clifford) Dr. Peacock admitted that Mary had been there.

Dr. Peacock had explanations readily at hand. He said that he asked Mary to obtain the consent of her husband to any operation that he might need to perform, which she did obtain, although the consent form subsequently proved to be in Mary’s handwriting. Dr. Peacock then admitted that he had treated Mary, but refused to answer any further questions on the ground that as a doctor he was bound to preserve the confidentiality of all communications that had taken place between himself and his patient.

Dr. Peacock was then arrested and conveyed to the City Watch house.

A search of Dr. Peacock’s residence led to the discovery of a gold bangle, a gold brooch and a gold ring in his bedroom, wrapped together in a piece of tissue paper.

Charred remains of a straw hat and a fur necklet were found in the ashes under a copper.

Mary’s mother later identified the brooch as a present that she had given to Mary, and Mary’s sisters identified the other items as similar to items belonging to Mary.

### *The search for a body*

The police looked for Mary's body at Eastbourne House. They took up the floor boards, they ripped out wall panelling, and they dug up the sewerage pipes in case she had been disposed of in that manner. They found nothing.

Running a hospital exclusively for women appears to have been a profitable occupation. Apart from owning Eastbourne House, Dr. Peacock owned land at Mordialloc, Cheltenham, Tyabb, Neerim South, Cranbourne and Buln Buln. The police searched his land. The main interest of the police, however, was a farm of 260 acres owned by Dr. Peacock at Carrum. Dr. Peacock employed a manager, who lived in a house in the farm. About half of the property was covered with ti-tree. A search was conducted by police, trackers, dogs and forty local volunteers, but only two things were found, personal items and a tooth plate.

The personal items again were found in the remains of a fire, namely the metal clip of a purse similar to a purse owned by Mary, 17 metal buttons and a safety pin. There was evidence that Dr. Peacock had been seen tending a fire on 27 August, but the personal items were common items that could have belonged to someone other than Mary. So far as the tooth plate was concerned, a dentist gave evidence at the first trial that he had fitted a tooth plate for Mary eight years ago, but it was a different plate.

### *The first trial*

The first trial took place before the Chief Justice, Sir John Madden.

It will be apparent by now that the Crown relied very heavily upon the evidence of **Clifford Poke**. At the trial Clifford gave evidence that accorded with the story that he eventually told the police.

Clifford would not have been an impressive witness. He admitted during the trial that he lied to Dr. Peacock (that he was married to Mary), lied to Mary's relatives (that she was missing), and lied to the police (that Mary was missing). Mary was missing, but in the early stages Clifford knew much more than he revealed.

He also admitted that he told the whole truth only after the police had indicated that they intended to charge him with an offence. Furthermore, Clifford probably did not give the impression that he was a naïve young man, because he gave evidence that he had left his home at Stanley in Tasmania when he was required to pay for another girl whom he had got into trouble.

**Medical evidence** was given that puerperal fever (also described in various places as absorption of poisoning or septicaemia) could only follow, not precede, an evacuation of the womb.

Medical evidence also was given that a severe case of puerperal fever could lead to fits of screaming, and that the use of chloroform to quieten the patient might have an adverse effect upon the heart.

Evidence also was given by **Ethel Parr** and **Elizabeth Coleman**, described as Dr. Peacock's housemaids although they seem to have performed some nursing duties. Ethel said that she attended Mary from 9 to 22 August 1911, when she was asked by Dr. Peacock to take some leave immediately, meaning that day. Ethel said that when she went on leave Mary was the only patient left in the hospital. She said that she enquired of Mary's condition, and was informed by Dr. Peacock that Mary was very

ill. Ethel said that she returned to work a few days later, but was again sent away. Elizabeth Colman gave similar evidence, meaning that she also was asked to take leave immediately.

Evidence was given about the **items found at Eastbourne House** and the **items found at Carrum**, but that evidence would have been of limited assistance to the Crown's case.

Evidence also was given by **Sydney Lack**, the friend of Clifford and Mary who had raised the \$25 given to Mary to enable her to pay Dr. Peacock. Sydney said that he had gone with Clifford and Mary to the Victoria Coffee Palace, where Mary took a room a few days before she entered Eastbourne House. Lack said that Mary looked worried, but well, when she was at the Victoria Coffee Palace.

At the time of **Dr. Peacock's** trial, he was entitled to make an unsworn statement to the jury instead of giving sworn evidence. An unsworn statement obviously was not made on oath, and it was not subject to cross examination. Unsworn statements were abolished during the 1990s. Dr. Peacock made an unsworn statement from the dock at his first trial.

Dr. Peacock said in his statement that he had **never** spoken with Clifford Poke.

He also explained Mary's treatment. He said that Mary had presented with abdominal pains, that he foresaw the possibility of a miscarriage, that he advised her to enter his hospital for treatment, that he negotiated a fee of five guineas per week payable in advance, that he did not perform any operation upon Mary, that he treated her successfully and a miscarriage was averted, that she had a fall which necessitated her staying in hospital a few days longer, and that she went away on 25 August 1911 "completely cured".

Dr. Peacock also stated that the jewellery found at the hospital belonged to Mary, but added that she gave it to him because she was unable to pay the whole of his fee.

Dr. Peacock called several witnesses, mainly in relation to the items found at Eastbourne House and at Carrum.

Dr. Peacock had one other employee at Eastbourne House, his housekeeper Miss **Sarah Elliott**. She was an elderly woman, and Dr. Peacock described her as his "right arm". It is interesting that she was not sent away on 22 August when the two housemaids were sent away.

Miss Elliott initially told the police that she could not throw any light upon the matter. However, at the trial Miss Elliott gave evidence that Mary was treated until 25 August, and that she believed that Mary went away well. I would like to know a lot more about Miss Elliott. I picture her as a faithful employee of long standing, prepared to say anything to protect her employer. The evidence that she gave, of course, was entirely consistent with Dr. Peacock's unsworn statement.

The outcome of the first trial, as I mentioned, was that the jury found Dr. Samuel Peacock guilty of murder.

### ***The appeals***

Dr. Peacock appealed to the Full Court of the Supreme Court. The Full Court comprised all five judges of the Supreme Court, including Sir John Madden who had presided at the first trial.

Four issues were considered by the Full Court.

The first issue was whether the evidence was sufficient to enable the jury to find that Mary was dead. Little attention was given to this issue, the judges being clearly of the view that there was sufficient evidence for a jury to find that Mary was dead, even though her body had not been found.

The second issue was whether the evidence was sufficient to enable the jury to find that Dr. Peacock caused her death. Again, little attention was paid to this issue, there being evidence from which the jury might conclude that Mary died during the course of an abortion performed by Dr. Peacock.

The third issue was whether the jury should have been warned of the dangers of convicting someone on the evidence of an accomplice, the accomplice being Clifford Poke. Only two judges dealt with this issue, one saying that there was corroboration and the other saying that a warning was not required.

The fourth issue, and as it turned out the crucial issue that eventually saved Dr. Peacock, was whether Chief Justice Madden had properly directed the jury as to the use it could make of the unsworn statement. The Chief Justice had instructed the jury that they should only consider the unsworn statement if they did not accept the sworn evidence. By a majority of three to two, the Full Court held that Chief Justice Madden had not misdirected the jury. Not surprisingly, the majority included the Chief Justice whose direction was the subject matter of the appeal.

Dr. Peacock appealed to the High Court. The appeal was heard by Sir Samuel Griffith, Sir Edmund Barton and Mr. Justice O'Connor. All three of them had played large parts in the Federation process and Barton, of course, had been Australia's first Prime Minister.

Griffith, Barton & O'Connor were the only judges appointed to the High Court when it commenced to sit in 1903, and they were still there in 1911. Interestingly, despite sitting together constantly for eight years, Dr. Peacock's case was the first case in which Sir Samuel Griffith and Sir Edmund Barton disagreed about a decision to be made by the High Court.

The crucial issue again was the direction given by Chief Justice Madden to the jury as to the use it could make of the unsworn statement. The three High Court judges did agree about one thing, namely that there had been a misdirection by Chief Justice Madden. Barton & O'Connor ordered a new trial whereas Sir Samuel Griffith would have set Dr. Peacock free.

### ***The second trial***

After the appeal to the Full Court, Dr. Peacock changed his solicitors. After the appeal to the High Court, he changed his barristers.

The result was that Dr. Peacock went into the second trial with new barristers instructed by new solicitors. The new barristers adopted a different approach. They put forward a theory at the second trial that Mary might have died as a result of a miscarriage that came about other than as a result of an abortion performed by Dr. Peacock.

The witnesses who gave evidence at the first trial again gave evidence, but there was an additional witness for the Crown.

**Caroline McColl** said she had been a patient at Eastbourne House. She gave evidence that during the night of 20 to 21 August 1911 she heard “terrible screaming” coming from the adjoining room. She said that she saw a flicker of light go past her door to the next room, and then the screams ceased.

Caroline McColl said that, next morning, Dr. Peacock insisted that she leave the hospital immediately, even though she asked to remain until the afternoon. This evidence obviously was similar to the evidence of the housemaids who had been asked to leave immediately one day later, on 22 August.

The unsworn statement made by Dr. Peacock at his first trial, to the effect that Mary recovered and went away well, was read out to the jury. As I have mentioned, the statement did not sit comfortably with the theory being put forward by his counsel that Mary might have died as a result of a miscarriage and not as a result of an abortion performed by Dr. Peacock.

The new theory expanded upon evidence given at the first trial in two respects.

First there had been evidence at the first trial that Mary had visited an aunt at Traralgon. Mary left by train on 4 August 1911 and returned on 7 August to be met by Clifford and Sydney Lack. As I have mentioned, they took her to the Victoria Coffee Palace where she booked in as Mrs. Nelson. Mary stayed at the Victoria Coffee Palace for two nights. Dr. Peacock’s counsel suggested that Mary might have gone to Traralgon to seek an abortion, in order to avoid paying money to Dr. Peacock. Indeed, they inferred that she may have been interfered with either at Traralgon or at the Victoria Coffee Palace.

Secondly, they made use of evidence given at the first trial that Mary had fallen upon the stairs at Eastbourne House on 16 August. Clifford’s evidence was that Mary and Dr. Peacock both told him that Mary had fallen on the stairs. The new witness, Caroline McColl, said that she heard a fall during the night, followed by Miss Elliott trying to soothe someone and then taking someone to the next room. It was established that Mary had been occupying the room next to Caroline McColl. Medical evidence was given that a fall might precipitate a miscarriage, particularly in a woman who had been subjected to interference.

The theory probably placed doubt in the minds of some members of the jury, because the jury disagreed and a third trial was ordered.

### ***The third trial***

The third trial, which commenced four days after the conclusion of the second trial, was a re-run of the second trial. However, counsel for Dr. Peacock extracted two additional pieces of information out of Sydney Lack.

Lack had said at the earlier trials that Mary was “drawn in the face and a bit red about the eyes when she returned” from Traralgon on 7 August. However, at the third trial he added that Mary had not been feeling well when she returned from Traralgon, and that Clifford had tried to get whisky for her to relieve pain.

Lack added that both he and Clifford had remained with Mary until midnight, and that he went to the Victoria Coffee Palace shortly after 8 am the next morning, 8 August, to ask Mary about the state of her health. Counsel for Dr. Peacock suggested that Lack must have been particularly concerned about Mary’s state of health to visit her at such an early hour after leaving her room at midnight.

Dr. Peacock's counsel used these additional scraps of information to supplement their theory that Mary might have been interfered with before she consulted Dr. Peacock, that she was unwell before she consulted Dr. Peacock, and that the fall on the stairs might have precipitated a miscarriage independently of any treatment by Dr. Peacock.

Counsel for Dr. Peacock probably learned much from the previous trials. They were able to create enough doubt in the minds of the jury at the third trial to convince the jury to acquit Dr. Peacock.

### ***Dr. Peacock's life after his acquittal***

Immediately after Dr. Peacock's acquittal, in March 1912, the High Court heard the appeals by The Age, The Argus and The Herald against the convictions for contempt of court.

The nature of the contempts had been the publication of statements made by potential witnesses about peripheral matters, followed by comments by the newspapers that went much further than the statements and inferred that Mary had gone to Dr. Peacock's hospital and died as a result of an abortion, and that Dr. Peacock had secretly disposed of her body. In reality the newspapers were jumping to conclusions, and there was a risk that those conclusions might influence any member of the public who read the newspapers and then became a member of the jury.

Dr. Peacock had the last laugh. The appeals were dismissed and the newspapers were ordered to pay Dr. Peacock's costs of the contempt proceedings.

As I have mentioned Dr. Peacock continued to practise at Eastbourne House until about 1919. His wife predeceased him, but he did not die until 1936 when he would have been about 97 years old.

Sadly, Clifford Poke seems to have disappeared into obscurity.

### ***Further research***

I thank Sylvia Black for finding a good article on the internet site of the City of Kingston, which concentrates on the searches carried out on the farm at Carrum. Sylvia also found time to obtain newspaper articles for me relating to the trials.

I have also spoken with Valda Cole, well known writer and historian whose home at Tyabb adjoins land formerly owned by Dr. Peacock. Valda said that while clearing blackberries at the rear of her property she and her husband came across a depression and wondered whether Mary's remains might be in the depression.

More significantly, Valda told me that she has records of land sales by Dr. Peacock at Tyabb, including an auction of blocks of land in February 1912. If that date is correct, it co-incides with the dates of his second and third trials, so Dr. Peacock must have been a very busy man in February 1912.

I intend to carry out further research, time permitting, with a view to preparing a more detailed paper.

***Your decision***

If you had been a member of the jury at the third trial, where a little more evidence was given than at the previous trials, would you have found Dr. Samuel Peacock guilty beyond reasonable doubt of the murder of Mary Davies?