

COURT OF APPEAL

16th January, 1997.

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Before: Sir Godfray Le Quesne, Q.C., (President)
Sir Peter Crill, K.B.E., and
M.G. Clarke, Esq., Q.C.

In the matter of Hannah Sandra Cotter, deceased,
and in the matter of Article 7 of the Inquests and Post-
mortem Examinations (Jersey) Law 1995.

Representation of Michael Martin Cotter and Carmel Cotter
(née McCarthy).

Appeal by the Representors from the Order of the Royal Court of 4th October, 1996, refusing their Application
that the Viscount be directed to summon a jury to conduct the inquest into the death of the deceased.

Advocate P.S. Landick for the Representors/Appellants.
J.G.P. Wheeler, Esq., Crown Advocate for the Viscount.

JUDGMENT

CRILL JA: This is an appeal from a decision of the Royal Court of 4th
October, 1996, refusing firstly to grant a stay of an adjourned inquest
on Miss Hannah Sandra Cotter; and, secondly, to order that the resumed
inquest be held with a jury.

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Miss Cotter, a recently arrived young waitress from the Republic of
Ireland, worked at the "L'Hermitage Hotel", St. Peter, where unhappily
she died on 20th June, 1996.

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For the purposes of this judgment it is not necessary to set out
all the circumstances which led to her death except to say that she was
seen by two different doctors on the two separate occasions she attended
at the hospital and by a private practitioner to whom a friend (her
room-mate at the hotel), Yvonne Maria Desmond, took her. The first
visit to the hospital was on 5th June, the second was on 18th June, and
a private doctor was consulted later on the same day.

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On 22nd June, a post mortem was performed on Miss Cotter and on
25th June, the Deputy Viscount opened an inquest and, having heard the
pathologist as to the cause of death and the father of the young woman
who identified her as his daughter, adjourned the inquest *sine die*. The

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cause of death was septicaemia and peritonitis due to a perforated duodenal ulcer.

5 Under such circumstances the Viscount had a duty to hold an inquest as required by Article 5 of the Inquests and Post-mortem Examinations (Jersey) Law, 1995, to which I shall hereafter refer as "the Law".

10 Further, under the powers conferred on the Viscount by Article 3 of the Law, the Deputy Viscount ordered a number of statements to be taken by the police. The Court was told that the Viscount is assisted by a Sergeant of the States of Jersey Police Force for this purpose. The Sergeant also made a report to the Deputy Viscount. I pause here to say that the Deputy Viscount, when acting for the Viscount, has the same powers and duties as that Officer (see Article 9 of the Department of the Judiciary and Legislature (Jersey) Law, 1965). The Deputy Viscount received nineteen statements.

20 On 25th June, a legal aid certificate was issued to Advocate Landick in order that he might advise the parents of Miss Cotter about possible claims for negligence arising from the circumstances of Miss Cotter's death.

25 The inquest was due to be resumed on 10th October, 1996. Following requests from Advocate Landick that, when the inquest was resumed, the Deputy Viscount should exercise his discretion under Article 7(1) of the Law and empanel a jury, the Deputy Viscount, on 4th October, 1996, declined to do so but invited Advocate Landick to apply again at the resumed inquest.

30 On the same day, (4th October) Advocate Landick, on behalf of the parents of Miss Cotter, at the usual Friday afternoon Court, presented an *ex parte* representation to the Royal Court during the period set aside for civil business. Although he asked for a delay, the Court dealt with the representation that afternoon and gave its judgment upholding the Deputy Viscount's decision.

35 On 9th October, the Bailiff, sitting as a Single Judge of this Court, stayed the holding of the resumed inquest pending the determination of the present appeal. The representation asked that the resumed inquest be stayed pending the resolution of the matters set out in the representation; that the Viscount be summoned to answer the representation on 11th October and that he be ordered to summon a jury for the resumed inquest. As I have said, the Court dealt with the matter at once. What the Court was being asked to do was to carry out a judicial review of the exercise by the Deputy Viscount of his discretion to resume the inquest without a jury. Before the Court could do that it was essential that it should be in possession of all the facts and matters that had led the Deputy Viscount to the decision he eventually made.

50 It is now necessary to look at the Law itself and at Article 7(1); and also at the English legislation. Article 7(1) reads:

55 *"For the purposes of an inquest, the Viscount may, if he considers it to be in the public interest, summon 12 persons selected by him to act as a jury".*

Paragraph (3) of that Article is as follows:

5 *"If it appears to the Viscount whether before he proceeds to hold an inquest without a jury, or in the course of an inquest begun without a jury that there is any reason for summoning a jury, he may proceed to summon a jury in accordance with this Article".*

10 The English legislation, for the purposes of this appeal, is contained in section 8 of the Coroner's Act 1988, upon which, it may be said, the Jersey law draftsmen drew to some extent. There are some differences which I shall note in a moment. Section 8(3) says this:

15 *"If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect -*

20 (a) *that the death occurred in prison or in such a place or in such circumstances as to require an inquest under any other Act;*

25 (b) *that the death occurred while the deceased was in police custody, or resulted from an injury caused by a police officer in the purported execution of his duty;*

30 (c) *that the death was caused by an accident, poisoning or disease notice of which is required to be given under any Act to a government department, to any inspector or other officer of a government department or to an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974; or*

35 (d) *that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public".*

40 Section 8(4) of that Act is as follows:

45 *"If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is any reason for summoning a jury, he may proceed to summon a jury in the manner required by subsection (2) above".*

50 It will be apparent that the limitations imposed on an English coroner under section 8(3) are not included in Article 7(1) of the Jersey Law. I make two observations on Article 7. First, once the Viscount has exercised his discretion and decided that the matter is of public interest, he is not entitled to go on to consider whether to call a jury. In short, there are not two stages under this Article and "may" equals "must".

55 Secondly, the "reason" referred to in Article 7(3) (and also section 8(4) of the English legislation) is a statutory "reason" as mentioned in Article 7(1).

I now look at the Royal Court's judgment. It should be borne in mind that the Court was sitting by way of a judicial review, as I have said, and that it was essential, therefore, for the Court to have before it every consideration of the Deputy Viscount that led to his decision. At the hearing, the Viscount appeared in person. At no time did the Deputy Viscount, the man after all who made the decision, tell the Court, either in person or through the Viscount, what were the factors upon which he had based his decision. The Viscount, according to the judgment of the Royal Court, appeared to consider the convenience of the witnesses as an important factor in wishing to proceed without further delay. It also was of some comfort to him to have a jury and, of course, as he said the jury was there to protect the interests of the public. I now turn and read the passage to which I have referred, at p.3 of the judgment:

"The Viscount has told us that the calling of a jury is both a comfort to him and, in certain circumstances, the jury is there to represent the interests of the public in what must be a matter of public interest. It seems that the Viscount has to draw a line which is the difference between a one-off incident which, although it may be extremely serious, clearly does not call for a jury, or one in which there was some system which was at fault which, if unchecked, might lead to further injury or death to members of the public. Indeed, Mr. Landick stressed that that was one of the arguments that he made in respect of this particular case".

It should be noted here that it was Mr. Landick himself who drew the Royal Court's attention to the section I have just quoted from the Coroner's Act, that is to say, section 8(3), by reading an extract to the Court from Jervis on the Office and Duties of Coroners (11th Ed'n): pp.176-182; 184-185, which is referred to in an earlier part of the judgment.

The Royal Court on 4th October, 1996, was aware of the background to this case - which I have sketched out at the beginning of this judgment - because, at the top of p.2, (line 4), it says:

"The events leading up to her death are set out in Mr. Landick's application to us and we must say that they are extremely disturbing and, on the face of it, may require investigation in some form or another".

It is quite true that the allegations which were made and the sequence of events were not put before the Court in the form of evidence and for the purposes of this judgment the Court has had to take them at their face value. But, as I say, they have not yet been subjected to proof, nor have the allegations been dealt with in the usual procedural way by pleadings. The Royal Court, as I have said, had earlier, at the bottom of p.3, referred to a passage from Jervis, but it failed, in my opinion, to make the important distinction between the qualifications in paragraph (d) and the virtually untrammelled discretion of the Viscount, or if it did, it disregarded it. It is very important that that distinction should have been made. Article 7 is very clear. Thereafter, from that point, the Court fell into a fundamental misunderstanding of the law and of the extent of the discretion vested in the Viscount and sought, wrongly in my opinion, to confine his

discretion by having regard to inappropriate English law. This was a serious misdirection and accordingly the judgment must be set aside.

5 That leaves the Court with three choices. We could, of course, deal with the matter now and direct the Viscount to hold the resumed inquest with a jury, but in our opinion that would be usurping the Viscount's powers. The discretion whether to hold it is his and we are not in possession of all the matters that he would be likely to be in possession of. Secondly, we could send the matter back to the Royal Court with the appropriate directions, but in that case the Royal Court would be obliged to receive affidavits from the Deputy Viscount - as we understand it, and according to the practice in the United Kingdom to which it is appropriate to have regard - setting out the reasons which led him to his decision and that would, in our opinion, lead to a significant delay.

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20 Accordingly, the third choice commends itself to us: we think that the Viscount should be directed to go through the exercise of his discretion. We do not know, of course, if the Deputy Viscount applied his mind to the wide discretion, nor whether he, in fact, took in all the relevant circumstances that were before him.

25 The Viscount should have put before the Royal Court an account of the way in which the decision was taken and the circumstances which the Deputy Viscount took into account; he failed to do so, as I have shown, and, rather than allow him the belated opportunity which would be accorded if we referred the matter back to the Royal Court, we think the matter should proceed by a fresh consideration by the Viscount. However, there are two factors which we should like to mention which he may wish to take into account. We only mention them as factors - we do not do so in any way with a wish to fetter his discretion because ultimately the choice is his - but we mention them for his consideration.

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35 First, many seasonal workers come to Jersey from other countries and are here without relations or friends and it must be an important matter of public concern that there is satisfactory provision for them in the Island, if they fall ill. Secondly, it may well be that the decision of twelve independent persons would be more likely to satisfy the public interest.

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45 Accordingly, we quash the decision of the Deputy Viscount and send the matter back to the Viscount in order that he may consider whether to call a jury at the resumed inquest in the light of his wide statutory discretion and our observations which I have just mentioned.

CLARKE JA: I agree.

THE PRESIDENT: I also agree.

Authorities

- R. -v- HM Coroner for Surrey, *ex parte* Irene Wright (1996) 160 JP 581.
- R. -v- HM Coroner for Hammersmith *ex parte* Peach (1980) QB 211 at p.226.
Coroner's Act 1988.
- Inquests and Post-mortem Examinations (Jersey) Law, 1995.
- Jervis on the Office and Duties of Coroners (11th Ed'n): pp.176-182;
184-185.
- Associated Provincial Picture Houses -v- Wednesbury Corporation [1947] 2
All ER 680.
- R. -v- South London Coroner *ex parte* Ridley [1985] 1 WLR 1347.
- R. -v- Southwark Coroner *ex parte* Hicks [1987] 1 WLR 1624.
- R. -v- Attorney General *ex parte* Ferrante (8th February, 1995)
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- Report of the Commissioners into the State of the Criminal Law of Jersey
(1847): pp.xxxvii, xlvi.