6 pages.

ROYAL COURT
(Samedi Division)

179.

4th October, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff and
Jurats Gruchy and Quérée

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 Ryan).

Application by the Representors for an Order directing the Viscount to summon a jury to conduct the inquest into the death of the deceased.

Advocate P.S. Landick for the Representors.
The Viscount.

JUDGMENT

THE DEPUTY BAILIFF: Mr. Landick, this afternoon, makes application for a stay of an inquest which is to be heard on Thursday, 10th October, 1996, and asks us to order that a jury shall be summoned to appear at the adjourned inquest.

The inquest is a resumed hearing and the Viscount informed us that it is important that the matter be heard on Thursday of next week because not only are there witnesses who might not be available if the matter is adjourned further, but a consultant from one of the teaching hospitals in London is coming over to give evidence. We have seen his *curriculum vitae;* he is named as Mr. Robert Anthony Parkins and he appears to us to be a most eminently qualified expert. He will, of course, be entirely impartial.

We will not go into the facts of the case at any length but suffice it to say the young lady died, according to the report of

the Director of Pathology, of septicaemia and peritonitis due to a perforated duodenal ulcer.

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.

Mr. Landick applies for the stay, as we have said, because he wishes the Court to order the jury to be empanelled for the inquest hearings and his applications to the Viscount have, to date, been refused on that request.

Looking for a moment at the relevant Law, Article 7 of the Inquests and Post-mortem Examinations (Jersey) Law 1995 (the Law) provides that:

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

It is quite clear, when one reads the Article, that the Viscount has a discretion in the matter. It is not entirely clear, because the Law is silent, as to the circumstances in which a jury will be empanelled when the Viscount, exercising his discretion, considers it to be in the public interest.

The exercise of a discretion is important and it seems to us necessary only to say that it is clear to us that in exercising his discretion the Viscount must look to the spirit of a statute so that his discretion is not exercised in a whimsical or perhaps in a nonsensical way, but is exercised in a form that we would call judicial.

There are two other matters which interest us, particularly in the Law. In Article 7(3), this passage appears:

> ***"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".***

And then again, in Article 8(2):

> ***"Where an inquest, or any part thereof, is held without a jury anything done at the inquest, or at that part of the inquest, by or before the Viscount alone shall be as validly done as if it had been done by or before the Viscount and a jury".***

Mr. Landick, helpfully, let us see an extract from Jervis on the Office and Duties of Coroners (10th Ed'n): pp.142-147, which refers to the Coroner's (Amendment) Act 1926, but the Coroner's Act 1988 is in very similar form and the circumstances in England where a jury may be called are these:

> ***"(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;***
>
> ***(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;***
>
> ***(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***
>
> ***(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".***

It is not difficult to see how the first three of those sub-sections are clear examples of what in our Law must be "the public interest" and indeed we have proof of that because a jury inquest was held recently when there were two deaths in fairly quick succession at HM Prison at La Moye by suicide.

What is important for us to understand is why a jury is necessary at all. We have to say that the facts set out by Mr. Landick lead us to no other conclusion but that this is a very unfortunate, but we would feel, unusual tragedy. It is important to note, as far as we are concerned, that the jury's duties as regards the conclusion that they will reach is set out in Article 14 of the Law. What the jury will decide is no different from what the Viscount will decide at the conclusion of the hearing of the evidence. The jury, as in England, gives its finding in writing and states who the deceased was and how, when and where he came by his death so far as such particulars have been proved to them. It is expressly provided that ***"the jury shall not make any finding of legal responsibility on any of these matters".***

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.

We have found a useful case which was provided for us this afternoon by the Viscount. It is a case in which a judgment was handed down on Friday, 14th June, 1995, in England and it is headed R. -v- HM Coroner for Surrey ex parte Irene Wright. There are three passages which we shall need to refer to. The first is at p.6 and there the Judge says this:

> *"In his affidavit, Mr. Burgess, the Coroner, sets out his reasons for not empanelling a jury. At paragraph 8 he says that it did not appear to him either before the inquest began or in the course of it, that there was reason to suspect that the death occurred in circumstances the continuance or possible recurrence of which was prejudicial to the health or safety of the public or any section of it. Mr. Croxon criticised the use of the word "suspect" in this context, but the criticism is in my opinion without foundation, since it is the word used in the section to which the Coroner had to have regard.*
>
> *At paragraph 9 the Coroner described the difficulty of drawing a line between a case involving a one-off incident, which would not call for a jury, and one in which a system was at fault....".*

Looking down the page at p.7 there is a reference from the Court of Appeal in R. -v- HM Coroner at Hammersmith ex parte Peach (1980) QB 211 where Lord Denning MR said at p.226:

> *"Having regard to these illustrations, it seems to me that the suggestions made by Bridge LJ in the course of the argument gives a good indication of the 'circumstances' in which a jury must be summoned. It is when the 'circumstances' are such that similar fatalities may possibly recur in the future, and it is reasonable to expect that some action should be taken to prevent their recurrence".*

And, later on, just this very short passage where the Court said:

> *"The question of who was in charge on this occasion was entitled to be regarded as an individual rather than a systemic failing".*

We have listened very carefully to everything which Mr. Landick has very ably said to us this afternoon, but we cannot see

that there is any evidence of a death which has ***"occurred in circumstances the continuance or possible recurrence of which was prejudicial to the health or safety of the public".***

We are therefore not minded to grant a stay, nor are we going to order that a jury should be convened. We draw consolation from the fact that we understand that a transcript will be made available of the evidence for Mr. Landick and of course he will put that transcript to whichever purpose he feels it should be put when the evidence has been heard.

Authorities

R. -v- HM Coroner for Surrey, *ex parte* Irene Wright (14th June, 1995) Unreported Judgment of the High Court of England.

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 (10th Ed'n): pp.142-147.