

COURT OF APPEAL

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9th October, 1996.

Before: Sir Philip Bailhache, Bailiff, Single Judge.

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).

The Application by the Representors for an Order directing the Viscount to summon a jury to conduct the Inquest into the death of the deceased was refused by the Royal Court on 4th October, 1996.

Application by the Representors, under Rule 15 of the Court of Appeal (Civil) (Jersey) Rules, 1964, for an Order adjourning the hearing of the Inquest, scheduled to resume on 10th October, 1996, pending determination of the Representors' appeal against the said Order of the Royal Court of 4th October, 1996.

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

JUDGMENT

THE BAILIFF: This is an application for a stay of the inquest into the death of Hannah Sandra Cotter, following the rejection by the Royal Court of the prayer of a representation of Michael Martin Cotter and Carmel Cotter, the parents of the deceased.

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Article 15(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964 confers on the Court of Appeal a wide discretion in the matter of the grant of the stay pending appeal.

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Mr. Landick referred me to the case of Seale Street Developments Ltd -v- Chapman (1992) JLR 243 CA. This was a case where the defendant to an action applied for a stay of execution pending appeal against an Order of the Royal Court determining his contract lease of business premises from the plaintiff in that action. The Court held in granting the application that it would

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exercise its discretion in the Applicant's favour: if a stay were not granted his appeal - which was based on a reasonable ground - would be rendered nugatory, the adverse effects of which would outweigh any inconvenience caused to the landlord by the delay requested since the Defendant would irretrievably lose her main source of income and would effectively be prevented from raising a désastre. There was nothing in the lease itself to preclude an application to reverse its annulment, nor was it for the Applicant to show special circumstances justifying the stay but rather for the party resisting the application to show special cause for the non-application of the principle.

Machin JA, during the course of his Judgment stated at p.250:

"Within three weeks of its decision in *Wilson -v- Church (No.2)*, the Court of Appeal gave judgment in *Polini -v- Gray*. The court was on this occasion composed of Jessel, MR and James, Brett and Cotton, LJJ. An action had been brought to determine the right of claimants to a fund. The plaintiffs failed in the court of first instance and also on appeal, but desired to appeal to the House of Lords. They sought an interim order preserving the fund pending the appeal. The order was sought under the then O.52, r.3, which gave the court power to make an order for the preservation of property the subject of an action. The application was not, therefore, one seeking a stay of execution, and of the judges, Cotton, LJ alone equated it with such an application, saying that he saw no difference in principle between staying the distribution of a fund to which the court had held a plaintiff not to be entitled, and staying the execution of an order by which the court had decided that the plaintiff was entitled to a fund. In both cases, the court suspended what it had declared to be the right of one of the parties. Cotton, LJ went on (12 Ch.D. at 446):

"On what principle does it do so? It does so on this ground, that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree or the distribution of the fund would make the appeal nugatory, that is to say, would deprive the Appellant, if successful, of the results of the appeal, then it is the duty of the court to interfere and suspend the right of the party who, so far as the litigation has gone, has established his rights".

Despite some observations which have been made by a single judge sitting in the Jersey Court of Appeal in *Barker -v- Merchant Vintners Ltd.* and *In re Barker*, we do not

consider that it is for the applicant to show special circumstances justifying the stay; so to state the principle is to invert the general guideline laid down in *Wilson -v- Church (No. 2)*. Our opinion is that once it is shown that if no stay be granted the right of appeal would be likely to be rendered nugatory, and that once a reasonable ground of appeal has been shown to exist, then special (that is to say, exceptional) circumstances have to be advanced to justify a refusal of the stay."

It seems clear to me that to refuse a stay in this appeal would, in effect, be to render the appeal nugatory. The continuation of the inquest would not, of course, in theory prevent a subsequent inquest being held with a jury, but that seems a highly undesirable result to contemplate.

The next question for me, therefore, is whether there is a reasonable ground of appeal. Article 7 of the Inquests and Post-mortem Examinations (Jersey) Law, 1995 provides at paragraph (1):

"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."

Mr. Landick submits that the Viscount has wrongly exercised his discretion because it is in the public interest, in this case, that a jury be summoned to assist the Viscount. I make no observations on that submission, obviously, but nonetheless the facts alleged in the representation do make disturbing reading, as, indeed, the Royal Court stated in the course of their Judgment. A young woman of 24 died in distressing circumstances which do require to be examined.

The Viscount very properly did not oppose the application and submitted himself to the wisdom of the Court. He did, nonetheless, point out the problem of delay and it is certainly true that the grant of a stay will cause a delay of some months in the bringing of the inquest to a conclusion. As against that, it appears that the body has been released for burial and the principal persons to suffer by any delay in the conclusion of the inquest will be the Applicants seeking this stay.

In the exercise of my discretion I accordingly order a stay, pending the determination of the appeal. Both Mr. Landick for the Applicants and the Viscount volunteered to assist the speedy bringing forward of the appeal which does appear to me desirable. Indeed, I consider that the appeal ought to be heard at the next convenient sitting of the Court of Appeal, which takes place in January. I accordingly abridge the times set out in the Rules in the following way: the notice of appeal will be served within seven days of the date of this Order; the Appellants' case will be filed no later than Friday, 22nd November; the Respondent's case

will be filed no later than Monday, 16th December, 1996. Costs will be in the appeal.

Authorities

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.

R.S.C. (1995 Ed'n) O.59, r.13.

Seale Street Developments ltd -v- Chapman (1992) JLR 243 CA.