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REGINA v HER MAJESTY'S CORONER AT HAMMERSMITH,

Ex parte PEACH (Nos. 1 AND 2)

[COURT OF APPEAL]

[1980] QB 211

HEARING-DATES: 15 November 1979, 14 December 1979

14 December 1979

CATCHWORDS:

Coroner - Inquest - Jury - Death from blow on head at political demonstration - Suggested unauthorised use of lethal weapon by police - Whether "circumstances... recurrence of which is prejudicial to... health or safety" - Whether coroner bound to summon jury - Coroners (Amendment) Act 1926 (16 & 17 Geo. 5, c. 59), s. 13 (2) (e) - Criminal Law Act 1977 (c. 45), s. 56 (1) (2) Coroner - Inquest - Police statements - Statements taken from witnesses by police - Available to coroner f or his use - Whether disclosable to interested party - Coroners Rules 1953 (S.I. 1953 No. 205), r. 16 (1) n1

HEADNOTE:

While the deceased was watching a demonstration, which became riotous and at which a number of police were present to keep order, he was struck a violent blow on the head from which he died. A pathologist's report indicated that the blow had been struck by some malleable instrument which was much heavier than a police truncheon. Extensive police inquiries followed. At the inquest into the death, an application was made on behalf of the deceased's family that the coroner should sit with a jury. The coroner ruled that section 13 (2) (e) of the Coroners (Amendment) Act 1926 n2 (amended by the Criminal Law Act 1977, section 56 (2) n3 was not applicable to the circumstances of the deceased's death and that on balance there were not sufficient grounds to summon a jury. The coroner, who had been furnished by the police with statements made to them by witnesses from whom he intended to take evidence at the inquest, also refused a request by counsel for the applicant, a brother of the deceased, that he should make such statements available to the applicant by his counsel and solicitor.

The applicant moved for judicial review of the coroner's decision and for orders of certiorari to quash his decision not to summon a jury at the inquest and for mandamus requiring him to summon a jury. The Divisional Court dismissed the application.

By a second and separate application, the applicant sought orders of certiorari to quash the coroner's decision that he was without power to make available to the applicant's counsel the statements of the witnesses whom he proposed to examine at the inquest and of mandamus to make such statements available.

On the second application: -

Held, by the Divisional Court, dismissing the application,

n1 Coroners Rules 1953 r. 16 (1): see post, p. 218G-H.

n2 Coroners (Amendment) Act 1926, s. 13 (2): see post, p. 214C-E.

n3 Criminal Law Act 1977, s. 56 (1) (2): see post, pp. 214F, H - 215A.

that the statements were police property and so were not available to be handed over without breach of confidence or trust; that although rule 16 of the Coroners Rules 1953 gave a right to any person who in the coroner's opinion was a properly interested person to examine a witness at the inquest, the words "examine any witness" meant question a witness for the purpose of putting that person's allegations, and the denial of a sight of the statements was not a breach of the rules of natural justice; and that accordingly the application should be refused (post, pp. 218D-F, 219B-C, E-F, 220B).

On appeal against the Divisional Court's dismissal of the application for judicial review of the coroner's decision not to summon a jury, at the hearing of which the argument proceeded on the hypothetical basis that there was evidence that the deceased had been struck by a policeman and that un authorised and dangerous weapons had later been found in police officers' lockers: -

Held, by the Court of Appeal, allowing the appeal, that the "circumstances" in which the coroner was bound to summon a jury under section 13 (2) (e) of the Coroners (Amendment) Act 1926 were those of such a kind that their continuance or possible recurrence would be likely to be a danger to a section of the public and could reasonably be avoided by the taking of appropriate steps by some public authority or other responsible body (post, pp. 226B-C, H - 227A,F-G, 228B); and that since, if the suspicion of the unauthorised use of a lethal weapon by a police officer was confirmed it would reasonably be open to the police authority to take appropriate steps to avoid the recurrence of such a circumstance in the future, the circumstances were within the meaning of paragraph (e) and it was compulsory to have a jury (post, pp. 225H - 226A, F-G, 228C-D).

Decision of Divisional Court, post, p. 213 reversed.

INTRODUCTION:

APPLICATIONS for judicial review.

The applicant Roy Peach, a brother of Clement Blair Peach, deceased, applied on October 12, 1979, for an order of judicial review to quash the decision of Her Majesty's Coroner at Hammersmith not to summon jury at the inquest or the deceased, to order the coroner to summon a jury and to prohibit the coroner from continuing the inquest without a jury.

By a second and separate application the applicant applied for an order of certiorari to quash the coroner's decision on October 12, 1979, that he was without power in law to make available to the applicant by his counsel and solicitor the statements of the witnesses whom he proposed to call touching the death of the deceased, an order of mandamus requiring the coroner to make copies of such statements available to the applicant by his counsel and solicitor and a declaration that the coroner was entitled to make such statements available to the applicant.

The coroner, John David Keith Burton, Her Majesty's coroner for Greater London (Western District), stated on affidavit that having carefully considered the applications he had ruled that section 13 (2) (e) of

the Coroners (Amendment) Act 1926 was not applicable to the death of the deceased; and that on balance there were not sufficient grounds for him to summon a jury; and further that the statements in question had been provided by the police to enable him to decide which witnesses should be called to give evidence and to facilitate his examination of the witnesses at the inquest and that having considered the Coroners Rules 1953 there seemed to him to be no general power to disclose the statements.

The facts are stated in the judgments of Lord Widgery C.J. and Lord Denning M.R.

APPEAL from Divisional Court.

By leave of the Divisional Court, the applicant, Roy Peach, appealed from the judgment of the Divisional Court on November 15 refusing his application for judicial review of the coroner's decision and for an order of mandamus requiring the coroner to summon a jury, alternatively for an order of certiorari to quash his decision not to summon a jury to inquire into the death of the deceased.

The grounds of appeal were that (1) the Divisional Court erred in its construction of the word "circumstances" in section 13 (2) (e) of the Coroners (Amendment) Act 1926, as amended, and its construction and application of the section; (2) the facts in evidence before the court were such that the test set out in section 13 (2) (e) were met and that the coroner was required by law to summon a jury.

The hearing of the appeal was expedited. At the hearing further affidavit evidence regarding the finding of some weapons in the lockers of police officers, referred to in the judgment of Lord Denning M.R. (post, p. 225B-C), was before the court.

COUNSEL:

John Mortimer Q.C., Stephen Sedley and Christine Booker for the applicant in both applications.

Simon D. Brown for the coroner in both applications.

Laurence Marshall for the Metropolitan Police in both applications.

John Mortimer Q.C. and Christine Booker for the applicant. The task of the coroner is to find the cause of death. That is the coroner's function. A coroner's inquest shall not include a "finding of any person guilty" of "murder, manslaughter or infanticide" (Criminal Law Act 1977, s. 56 (1)) the recommended verdict in such cases being "unlawful killing" (see rule 9 of the Coroners (Amendment) Rules 1977 (S.I. 1977 No. 1881)); alternative verdicts being misadventure, or accident. There is a body of evidence giving reason to suspect that the deceased died from a blow on the head struck by something heavier than a regular police truncheon and there is fresh evidence that unauthorised weapons

have been found in police officers' lockers. At the moment the Director of Public Prosecutions has decided to take no action.

The Coroners (Amendment) Act 1926, section 13 (1), changed the law in allowing a coroner to hold an inquest without a jury in certain cases in lieu of summoning a jury as required by section 3 of the Coroners Act 1887. Where the coroner has reason to believe that the death occurred in any of the five circumstances set out in section 13 (2) (a) to (e) of the Act of 1926 the coroner "shall proceed to summon a jury." By section 56 (2) of the Criminal Law Act 1977, paragraphs (a) and (d) of section 13 (2) of the Act of 1926 ceased to have effect. But paragraph (e) of section 13 (2) remains in force, "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." The Divisional Court considered "circumstances." It is the first case to be heard under section 13 (2) (e).

If the deceased died through the infliction of a wound by a police officer using an unauthorised weapon, that would be a circumstance "the... possible recurrence of which" could be "prejudicial to the health or safety of the public." The police are charged with the public safety. It is in the interests of public safety that the police should not use unauthorised weapons. The evidence suggests that the deceased was hit on the head by a police officer carrying something heavier than an authorised truncheon and as a result he died. The lack of control by a police officer in an inflamatory situation would fall within section 13 (2) (e) of the Act of 1926.

[BRIDGE L.J. Must the "circumstances" in section 13 (2) (e) be those that are not covered by (a) and (b)?]

A mere repetition of a private crime would not come within paragraph (e). It is a question of how the police are conducting their duties. If the police are able to be armed in such a way as is suggested by the evidence in this case, it takes it out of paragraph (a) and into paragraph (e). If a police officer drove a car in such a way as to kill a member of the public it might fall within (e). The incident arose from a public meeting.

The words of section 13 (2) (e) must be given their ordinary meaning. "Circumstances" means all the facts surrounding the death. The only limitation is the phrase "possible recurrence of which is prejudicial to the health and safety of the public." The word used is "possible" not "likely." Just as much as the leakage of nuclear waste, the presence of the police, armed with unauthorised weighted truncheons, is "prejudicial to the... safety of the public" or a"section of the public." As distinguished from a bank robbery, the public concern is with a public body, the police. There is a distinction between private crime and public safety. In the latter case there may be the opportunity to control a "recurrence" of the "circumstances."

Simon D. Brown for the coroner. The coroner has formed no view as to the verdict. He thought that it would be administratively problematic to summon a jury. There were grounds for there being "reason to suspect" that the deceased came to his death as a result of being hit by a policeman possibly using a weapon which he should not have used

and hitting too hard: it appeared to the coroner that there was reason to suspect that the death so occurred. Section 13 (2) (e) of the Act of 1926 imposes a mandatory requirement when it applies. The "circumstances" therefore should be readily and precisely definable. Coroners must be sure that when the section is intended to apply it does apply. The coroner's only knowledge of a jury empanelled under paragraph (e) was where there was a tendency for a highway to flood over an electric cable exposed in a hole in the road and a man was electrocuted. In the 12 months ending on December 31, 1977, there were some 6,000 inquests with juries and nearly 16,700 without. In the 12 months after the Act of 1977 came into force there were some 1,123 with juries and over 21,800 without. Lord Widgery C.J. was right at p. 216C-E. One must be able to determine with reasonable certainty and clarity when paragraph (e) applies. "Public concern" is too wholly imprecise to form the test.

"Circumstances" in section 13 (2) (e) of the Act of 1977 refers to the physical circumstances surrounding the death, a physical situation on the ground which excludes any tendency to violence or want of supervision. Where "there is a possibility of doing something about it" is a step in the right direction. The submission made in the Divisional Court that if a case came within paragraph (a) or (d) it could not come within (e) went too far. The case of the hole in the road is an example of surrounding physical circumstances. The words "possible recurrence" are there to meet a physical risk that does not remain constant; e.g., flood defences. One may have to change the physical situation in which the death occurred. See Report of the Committee on Death Certification and Coroners (Cmnd. 4810), para. 16.48, p. 191. "The coroner's jury is an anachronism": see the New Law Journal, vol. 129, p. 1225, December 13, 1979, with its reference the "whimsical decision by a coroner's jury" in the "Liddle Towers case."

The coroner rightly took the view that the key words in section 13 (2) (e) were "health or safety" and "of the public or any section of the public" and that it was applicable to circumstances such as a leakage of nuclear materials or an outbreak of food poisoning from a factory. His approach was right. It is a pure point of construction.

The proceedings and evidence at an inquest are to be directed solely to ascertaining who the deceased was and "how, when and where" he met his death: see rule 26 of the Coroners Rules 1953 (S.I. 1953 No. 205), as amended by the Coroners (Amendment) Rules 1977 (S.I. 1977 No. 1881). A coroner or the jury may make a "recommendation designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held": see rule 27 (which does not refer to "circumstances") and also rules 33 (also amended by the 1977 Rules) and 34. It is accordingly implicit in the rules that a coroner may sit without a jury in cases involving the possibility of future similar fatalities of a preventable nature. The court should seek a construction of the section which is in harmony with the rules.

"Circumstances" means surrounding physical circumstances and if one moves outside the ambit of the surrounding physical circumstances one cannot find any cogent test to be applied. Parliament would not

intend to fetter the coroner's discretion as to whether to summon a jury more than necessary. The Shorter Oxford English Dictionary, 3rd ed. (1944), vol. 1, p. 315, defines "circumstance" as "that which stands around or surrounds; surroundings."

Laurence Marshall for the Metropolitan Police Commissioner. The Commissioner is quite neutral as to whether a jury should be summoned. A limited construction should be given to section 13 (2) of Act of 1926. The "circumstances" in paragraph (e) must in themselves, without misfeasance, be "prejudicial to the health or safety of the public or any section of the public." There is no evidence that any professor or doctor can say that any weapon found in the police officers' lockers was connected with the death of the deceased. The weapons found were in private lockers. It is difficult to stop people having souveniers. Section 13 was designed to give a coroner power to sit without a jury.

Mortimer Q.C. in reply. There is no reason to limit "circumstances" in section 13 (2) (e) to physical circumstances.

PANEL: Lord Widgery C.J. and Griffiths J Lord Denning M.R., Bridge L.J.and Sir David Cairns

JUDGMENTBY-1: LORD WIDGERY C.J

JUDGMENT-1:

LORD WIDGERY C.J: In these proceedings Mr. Mortimer moves on behalf of one Roy Peach of Napier, New Zealand, a solicitor, for judicial review (1) to quash the decision of Her Majesty's coroner not to summon a jury at the inquest of Clement Blair Peach deceased; (2) to order Her Majesty's coroner to summon a jury; and (3) to prohibit Her Majesty's coroner from continuing the inquest of Clement Blair Peach deceased until a jury is summoned.

By paragraph 3 of the statement under R.S.C., Ord. 53 the reasons on which the application is based are given in these terms: "The grounds upon which the said relief is sought are that Her Majesty's coroner erred in law by failing to summon a jury as required by section 13 (2) (e) of the Coroners (Amendment) Act, 1926." It is very succinctly put and very succinctly argued, for which this court is duly grateful.

The circumstances, or should I say the surrounding facts to avoid a controversial word, need to be filled in only very briefly. On April 23, 1979, there was a very substantial rally or demonstration in the area of West London where the National Front were involved. A very large number of police were drafted to the area for the purpose of maintaining order. At the end of the demonstration or at some stage in it serious rioting broke out.

There was a great deal of evidence before this court, and more before the coroner, about the nature of that rioting and the circumstances which gave rise to it. But for our purposes it suffices to say that it was the case for the applicant that Clement Blair Peach, who was present at this demonstration as a spectator and with no other purpose, was struck one very violent blow on the head and died shortly afterwards. It is right to say that, if such a blow were struck, it is unlikely to have been administered by a police truncheon, because the pathologist who investigated the matter takes the view that it is of such a style and character that a truncheon would not be capable of making that kind of wound.

The story thereafter is taken up in the coroner's affidavit. He refers us to the law on the subject, and I can conveniently do that now. The issue, as I have already indicated, is whether or not there should be a jury to sit with the coroner in the inquest on Blair Peach.

The law about coroners' juries for present purposes can be taken from section 13 of the Coroners (Amendment) Act 1926 as slightly amended. In that section it is provided in subsection (1):

"Subject to the provisions of this section, a coroner within whose jurisdiction the dead body of a person is lying,

may, in lieu of summoning a jury in the manner required by section 3 of the Coroners Act 1887, for the purpose of inquiring into the death of that person, hold an inquest on the body without a jury."

So far, the basic law on the subject contemplates there would be a jury, but by section 13 the coroner is given authority to act by himself, but that new power was subject to subsection (2) to which I must refer. Subsection (2) provides:

"If it appears to the 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 - (a) that the deceased came by his death by murder, manslaughter or infanticide; or (b) that the death occurred in prison or in such place or in such circumstances as to require an inquest under any Act other than the Coroners Act 1887; or (c) that the death was caused by an accident, poisoning or disease notice of which is required to be given to a government department, or to any inspector or other officer of a government department under or in pursuance of any Act; or (d) that the death was caused by an accident arising out of the use of a vehicle in a street or public highway; or (e) 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; he shall proceed to summon a jury...."

That section has been slightly amended, as I say, by the Criminal Law Act 1977. Section 56 (1) provides:

"At a coroner's inquest touching the death of a person who came by his death by murder, manslaughter or infanticide, the purpose of the proceedings shall not include the finding of any person guilty of the murder, manslaughter or infanticide; and accordingly a coroner's inquisition shall in no case charge a person with any of those offences."

It is well known that what led to this amendment of the law is that considerable embarrassment had been created in the courts where the charge of murder was to be heard before the Crown Court but a coroner's jury had already reached a finding on that issue. It was undesirable from many points of view that that should happen, and so we find in section 56 (1) a removal from the coroner's power any question of returning a verdict of murder, manslaughter or infanticide.

Subsection (2) provides:

"Without prejudice to the power of a coroner under subsection (2) of section 13 of the Coroners (Amendment) Act 1926 to summon a jury if it appears to him that there is any reason for doing so in

a case in which he is not required by that subsection to do so, paragraphs (a) and (d) of that subsection... shall cease to have effect."

Paragraphs (a) and (d) come out, as it were, from the subsection, and the circumstances in which a jury is mandatory are restricted now to paragraphs (b), (c) and (e) of section 13 (2) of the Act of 1926.

Helpfully, counsel have agreed before us that, today at all events, there is only one issue to be decided. The issue which we have to decide is whether the coroner as a matter of law was bound by virtue of the statutory provisions I have mentioned to order a jury in this case. In other words, the question for us is whether the matter fell within subsection (2) (e), which subsection would create such an obligation if the matter once fell within it.

I read subsection (2) (e) again:

"If it appears to the 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 -... (e) 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...."

One can see the purpose of that, I think, clearly enough. Certain deaths occur in circumstances in which the coroner

might be of the opinion that the surrounding circumstances were in some way the cause of the death occurring. If they are likely to happen again, if the same threat was liable to be placed before some other person, the subsection provides that the coroner must summon a jury to decide the issue.

The question which we ultimately have to decide is what is meant by "circumstances" in this case, and I turn again to the coroner's affidavit as indicative of how his mind was working in this matter. He said: "I did not refuse the application under section 13 (2) (e) for the reasons given in paragraph 6 of that affidavit." He is speaking of the affidavit of Mr. Grant filed on behalf of the applicant. He continued:

"These reasons formed part of the reasons I gave for not summoning a jury under my general discretion to do so, of which it seemed clear that no complaint is made in these proceedings before this honourable court."

The coroner is right there when he assumes that before this court today we are not concerned with any matter of discretion; we are simply concerned with the short question of whether the coroner was bound by law to summon a jury. His affidavit continued:

"In so far as the application related to my being legally bound to summon a jury, the contention was that the 'circumstances' concerning the death of Blair Peach which made section 13 (2) (e) applicable were the 'grant of permission for a racist-facist organisation to hold a political meeting' or 'the role played by the Special Patrol Group and the reasonable use of force...' I do not accept that either of these circumstances made section 13 (2) (e) applicable and similarly, I do not accept that even if the death of Blair Peach

occurred in the way suggested in the statements exhibited to the affidavit of Laurence Alan Grant, that section 13 (2) (e) would apply. I took the view that the key words in section 13 (2) (e) are 'health and safety' and 'of the public or any section of the public,' and these words indicate the intention of the subsection, so that the subsection would be applicable to circumstances such as the case of a leakage of nuclear material from a power station or an outbreak of food poisoning from a defective machine in a factory."

The coroner relied on those reasons, and I cite them merely to show how his mind was working because, in the end, the question to be decided today must be decided by an interpretation of the statute and not by what was going through the coroner's mind.

No one has found it easy to produce a crisp and comprehensive definition of the phrase "circumstances" in subsection (2). It is quite clear that we are not concerned in deciding whether the subsection applies to go and to look at all the facts surrounding the death. We have to look at the circumstances in which the death occurred and ask ourselves whether in the light of those circumstances there is a prospect of injury to health or safety to the public in the event of repetition.

I think, speaking for myself, that the coroner was right. He got as near to right as anyone is likely to get when he described the circumstances to which one should have regard as being a case of a leakage of nuclear material from a power station or an outbreak of food poisoning from a defective machine in a factory. That is the sort of case for which subsection (e) was designed, matters which could affect the public if they were repeated and which therefore would involve the appointment of a jury.

I do not propose to say more save that I would refuse the application.

JUDGMENTBY-2: GRIFFITHS J

JUDGMENT-2:

GRIFFITHS J: I agree. It is clear, as Mr. Brown has submitted, that some limitation must be placed on the very general words that appear in section 13 (2) (e) because, if the word "circumstances" was read as relating to the particular

facts surrounding the death being inquired into, it would result in a ridiculous state of affairs. He gave by way of example a bank robbery; experience unfortunately teaches one that it is likely that bank robberies will continue to recur. If the "circumstances" are the actual facts of the bank robbery then because bank robberies will continue to occur and are prejudicial to public safety it would follow that the coroner would have to summon a jury in every case of a killing during the course of a bank robbery. This result cannot have been intended, when it is borne in mind that a coroner is no longer required to summon a jury to inquire into a case of murder which may have occurred in a bank robbery.

In my judgment, the word "circumstances" relates to the wider setting in which the particular death has occurred, and I have, for instance, in mind that there might be a death by drowning that was being investigated, and it revealed that the flood precautions taken were wholely inadequate so that there was reason to suspect that a continuance

of those inadequate precautions would lead to further deaths or possibly that when the spate rose again there would in the future be a recurrence of the flood.

The facts of the present cases as presented to this court go no further than this. They reveal the possibility that a police officer may in the course of a disturbance have used a weapon other than a truncheon. There is no suggestion whatever in any of the material so far before this court that it was police policy to issue such weapons; still less that it was police policy that they should be employed so as to endanger life.

I would not go so far as to accept Mr. Brown's submission that section 13 (2) (e) can never be applicable when a case of murder or manslaughter may be involved. If I could bring myself to contemplate the situation in which the evidence made the coroner suspect that the police were deliberately issuing and ordering the use of weapons in crowd control that caused serious risk to life, then I can see that a coroner might in that state of affairs consider that there were circumstances, namely, the police policy, that would justify him in having a jury.

But that is not this case. It is nowhere near it. Putting the worst construction on the evidence before us, this is one isolated occasion of a policeman possibly using a weapon that he should not have used and hitting too hard. That being the case, in my judgment, it does not fall within the provisions of section 13 (2) (e).

JUDGMENTBY-3: LORD WIDGERY C.J

JUDGMENT-3:

LORD WIDGERY C.J: In these proceedings Mr. Mortimer moves on behalf of one Roy Peach, a solicitor of Napier, New Zealand, who is the brother of Clement Blair Peach, deceased.

The relief sought is, first of all, an order of certiorari to bring up and quash the decision of the respondent, who is Her Majesty's coroner for the appropriate area, given on October 12, 1979, that he was without power in law to make available to the applicant by his counsel and solicitor the statements of the witnesses whom the coroner proposes to examine touching the death of Clement Blair Peach.

Secondly, the applicant asks for an order of mandamus requiring the coroner to make available to the applicant by his counsel and solicitor copies of the statements referred to.

Thirdly, the applicant asks for a declaration that the coroner is entitled to make available to the applicant the statements of all witnesses whom he proposes to examine touching the death of Clement Blair Peach. The third claim for relief there is no doubt inspired by the fact that the coroner has so far expressed the view that he is prevented by law from disclosing the documents in question.

This case represents another preliminary point in the case with which this court was last concerned. Both arise out of the death of Blair Peach, and it is only necessary in this, the second case, to deal with the facts in the barest outline.

The death of the deceased occurred on April 23, 1979, and he was killed in the process of a demonstration-cum-riot in the Southall area on that day. There were many police in the area seeking to restore order,

and a great deal of violence was shown. In the course of this violence someone, as yet unidentified, hit Peach on the head with something which was not a policeman's truncheon so far as the evidence will go, but was some similar sort of weapon.

In preparation for the hearing before the coroner consideration has been given to whether the applicant, who is an interested person in the inquest, should be entitled to see and profit from some 60 odd statements which have been taken in respect of this case and which he would naturally wish to see in preparation for the hearing.

The method of obtaining these statements, as we have been told in the course of argument, is this. The police, first of all, when a serious complaint is made against one of their number must take evidence in order to deal with the disciplinary inquiry which is bound to follow. Apart from any other obligation or desire the police might have had to take statements in this case, they were bound to take elaborate statements to satisfy their duty under the relevant Police Acts.

Those documents as a matter of practice and goodwill are in general in practice allowed to be given to the coroner to avoid his having to make similar and parallel investigations. There does not seem to be any legal authority for this being done, but it is obviously extremely sensible. In this case, as in many others we are told, the statements to which I have referred were handed over to the coroner so that he could use them to decide what witnesses to call and generally to make arrangements for the orderly calling of the evidence at the inquest.

The applicant now seeks to have a sight of these documents, or, alternatively, to take copies of them, and his claim is based on a number of grounds.

First of all, as I say, the method of preparation of the statements to which I have already referred indicates that those statements started as police property and, in my judgment, continued as police property, and at the present time are police property. I see no way in which anyone other than the police authorities can obtain any sort of legal title to these documents, and therefore prima facie they are not available to be handed over to the applicant. Prima facie the present custodian of the documents, the coroner, could not without breach of confidence or trust show them to the applicant.

One starts therefore - and I think Mr. Mortimer largely accepted this as his argument - with the fact that the bare ownership of these documents would indicate that the police authority are dealing with them correctly rather than incorrectly.

Other matters are raised in argument. The next point which is taken is that a right for the applicant to see these documents is created by rule 16 of the Coroners Rules 1953. That provides:

"(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who in the opinion of the coroner is a properly interested person shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor."

There are certain provisos which I do not think I need to read.

One sees consequently that the rule creates a clear and understandable right for any person interested to the degree required by the coroner to examine any witnesses at the inquest. If one gives those words their ordinary meaning, that means that the person so selected can question any witness at the inquest, but it does not, in my judgment, in any way affect the fact that the documents in question are still the property of the police and not within the coroner's disposition at all.

Of course any lawyer will say that one cannot examine a witness unless one can cross-examine. That is an understandable point of view as a lawyer's expression. But to my mind in these rules the expression "examine any witness" merely means "question a witness," and what is contemplated is that the party in question should be able to put to the witness his allegations, put the points which he wants to raise at the inquest. It is not necessary for that purpose to have all the statements, although it would no doubt be a very interesting exercise very often for counsel for the applicant if he could.

In my judgment, there is nothing in rule 16 which takes the matter one inch further forward, and so one is finally thrown back on the contention that the denial of these documents to the applicant is a breach of the rules of natural justice.

One can understand such an application being made and such a description being given to what is now being done. The applicant's counsel, both here and one understands below, were eloquent in their description of how important it was that even-handed justice should prevail, and that if the police were allowed one copy of the statements then the applicant should be allowed another copy.

Again, all of that makes good listening, but one must keep one's eye on the ball and come back to what is the main question here. It is important, I think, to stress that, as far as I know, there never has been a case in which natural justice was invoked through the denial of documents except when the person to whom the documents had been denied was a person against whom some charge was being made. It is elementary that, if a charge is being made against a person, he must be given a fair chance of meeting it. That often means he must be given documents necessary for the purpose. But there is no charge here made against Mr. Peach, the applicant, and to my mind, try as he will, he fails to get himself in through any of these three doors. For that reason I would refuse the appplication.

JUDGMENTBY-4: GRIFFITHS J

JUDGMENT-4:

GRIFFITHS J: I agree. A coroner's inquest is an inquisitorial procedure with a very limited objective indeed. The objective is set out in rule 26 of the Coroners Rules 1953. It is limited to ascertaining the following matters: who the deceased was; how, when and where the deceased came by his death. There is a further specific limitation provided by the Coroners (Amendment) Rules 1977. These provide by rule 7 that no verdict shall be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or of civil liability.

It is quite true that the coroner may allow interested parties to examine a witness called by the coroner. But that must be for the purpose of assisting in establishing the matters which the inquest is directed to determine. It is not intended by rule 16 to widen the coroner's inquest into adversarial fields of conflict.

That being so, because this applicant is in no risk of himself being attacked or criticised, it seems to me that the general rules of natural justice, which require a person against whom some accusation is brought to have access to all the material that may be relied upon against him, have no application whatever. I think it would be very unfortunate if coroners' inquests were turned into a field-day for lawyers by enlarging the examination of witnesses called by a coroner beyond their proper scope.

For these reasons and the reasons give by Lord Widgery C.J. I agree that this application should be dismissed.

JUDGMENTBY-5: LORD DENNING M.R

JUDGMENT-5:

LORD DENNING M.R: On the afternoon of April 23, 1979, there was a riotous assembly in Southall. Not only riotous - but unlawful. The police came on the scene to try and keep order. In the course of it Mr. Clement Blair Peach

was struck on the head. We do not know how it happened. He was carried off to hospital, where he died early the next morning.

An examination of the body was made by a distinguished forensic professor, Professor Mant of Guy's Hospital, in the presence of another, Professor Bowen, who was appointed by the coroner, and the coroner himself. I will read two or three sentences from their report. It says:

"The deceased was taking part in a political demonstration on the evening of April 23, 1979. He sustained a head injury and was taken to Ealing Hospital by ambulance arriving at about 8 p.m." And after describing the injuries found: "Death was pronounced at 12.10 a.m. on April 24, 1979... The cause of death was: Extra-dural haemorrhage due to fracture of the skull...

"Remarks

"(i) Death has resulted from a single heavy blow to the left side of the head. There were no other injuries upon the deceased. (ii) The instrument used, must have been very weighty and yet at the same time was malleable and without a hard edge as there were no lacerations to the scalp. (iii) A police truncheon is relatively light and when used usually lacerates the scalp unless the head is protected by thick hair or head gear... (vii) The instrument used could have been a lead weighted rubber 'cosh' or hosepipe filled with lead shot, or some like weapon."

That evidence shows there is reason to suspect that the weapon was a heavy weighted weapon - much more harmful than a police truncheon.

There has to be an inquest as to the cause of death. The question for decision is whether it is to be held by a coroner with a jury or without a jury. This depends on the true interpretation of the statute.

Before 1926 the coroner always sat with a jury. It was compulsory in all cases. After 1926 it was not always compulsory to have a jury. But it still remained compulsory in certain categories specified in section 13 (2) of the Coroners (Amendment) Act 1926. That subsection provides:

"If it appears to the 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 - (a) that the deceased came by his death by murder, manslaughter or infanticide; or (b) that the death occurred in prison or in such place or in such circumstances as to require an inquest under any Act other than the Coroners Act 1887; or (c) that the death was caused by an accident, poisoning or disease notice of which is required to be given to a government department, or to any inspector or other officer of a government department, under or in pursuance of any Act; or (d) that the death was caused by an accident arising out of the use of a vehicle in a street or public highway; or (e)" - and this is the one which is important to-day - "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; he shall proceed to summon a jury...."

So in those five categories the coroner was bound to summon a jury, as he had always done in the past.

Forty years later a Home Office committee inquired into the duties of coroners. The chairman was Judge Norman Brodrick. In November 1971 they presented a Report to Parliament, Report of the Committee on Death Certification and Coroners (Cmnd. 4810). That committee recommended that there should be a change from the past: and that the coroner should in all cases have a discretion whether to order a jury or not. In paragraph 16.49 it said:

"We recommend that the mandatory requirement to summon a jury for inquests in certain categories of death should be abolished, but that a coroner should retain the power to summon a jury where he considers that there are special reasons for doing so."

Parliament did not accept that recommendation. It is important to emphasise it. In section 56 (2) of the Criminal

Law Act 1977 Parliament only took away two of the categories - (a) and (d) - that is, the homicide cases and the road accident cases. In those cases it is no longer compulsory to have juries. But it remains compulsory in (b) where death occurs in prison and (c) where death is caused by an accident, a poisoning or disease, notice of which is required to be given to a government department; and in (e) where

"... 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."

In those categories it is still compulsory for the coroner to summon a jury.

The debate today is whether section 13 (2) (e) of the Act of 1926 applies to the present case or not: particularly the word "circumstances."

Before I go further I would like to state the hypothetical case - "hypothetical" because nothing is proved at the moment - upon which the argument has proceeded. It has proceeded on the assumption that there is evidence that Mr. Blair Peach was struck by a policeman on that afternoon; that observers in the vicinity saw it, and can give evidence about it; and that he was struck by something more harmful than a police truncheon. Together with the fact that, when inquiries were being made, some weapons were found in the lockers of police officers. They included four police issue truncheons, one brass handle, one leather encased truncheon (approximately 1 foot long with a knotted thong at the end), one metal truncheon which was encased in leather of about 8 inches in length with a very flexible handle and a lead weight in the end, one wooden pickaxe handle, and so forth. I will not go through them all. Those were taken from police lockers, but there is no evidence that they were used on or in connection with that afternoon at all.

Furthermore, statements have been taken from 60 witnesses. The material placed before the coroner covers 3,000 pages. The question is whether in those circumstances there is reason to suspect "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."

Before the Divisional Court Mr. Simon Brown went so far as to say that there was no overlapping of those five categories. For instance, if Blair Peach came to his death by murder or manslaughter, it came within (a) and could not come within (e). I must say - and I think he conceded it afterwards - that that is not right. Even though a death comes within (a), nevertheless it might also come within (e) and then it would be obligatory to summon a jury. For instance, where there are very dangerous crossroads with no warning signs at all, and there is a death coming within (d), nevertheless it also comes within (e): because the circumstances are such that a possible recurrence of a similar accident would be prejudicial to the safety of the public. In such a case it would be obligatory to summon a jury.

Similar instances can be taken from other fields. Griffiths J. in the Divisional Court gave this example, ante, p. 217C:

"If I could bring myself to contemplate the situation in which the evidence made the coroner suspect that the police were deliberately issuing and ordering the use of weapons in crowd control that caused serious risk to life, then I can see that a coroner might in that state of affairs consider that there were circumstances, namely, the police policy, that would justify him having a jury."

Those are instances taken at random in which category (e) would require a jury compulsory to be summoned. But I would ask this: if the police were issued with dangerous weapons - such as a heavily loaded cosh - which could cause fatalities, that would be a case for a jury to be compulsorily summoned because there would be a possible recurrence.

So also if, because of want of control or discipline, the superintendent knew that his men had dangerous weapons and turned a blind eye to their using them. That again would be a case where it would be obligatory to summon a jury. The possible recurrence would be prejudicial to the health or safety of the public. Examples could be multiplied in other fields. For instance in hospitals where the method of prescribing drugs or, keeping them might be such that the

continuance of such methods might be dangerous to the public. There are many circumstances in which possible recurrence may be prejudicial to the health and safety of the public.

Having regard to these illustrations, it seems to me that the suggestions made by Bridge L.J., 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. I use those words "prevent recurrence," not only because Bridge L.J., used them, but also because they are the very words which were used in the Brodrick Committee's Report on Coroners (Cmnd. 4810) in paragraph 16.53, and in rules 27 and 34 of the Coroners Rules 1953, whereby juries are entitled to make recommendations designed to "prevent the recurrence" of fatalities similar to that in respect of which the inquest is being held.

I say nothing whatever as to the merits of this ease. The police forces of this country carry out their duties faithfully and well. They are without compare in all the world. They keep the peace. When riots occur, they restore order. Nevertheless, when allegations of brutality or misconduct are made against the police, and a fatality does occur, then, if the circumstances are such that something may have gone wrong, and there is a danger of it happening again, a jury should be summoned. Mr. Blair Peach's brother is a solicitor in New Zealand. He has asked for a jury. We have to decide it on the hypothetical circumstances that Mr. Peach was struck by a policeman with something heavier than a truncheon and that there were then dangerous weapons in the policemen's lockers. On those hypothetical circumstances. Mr. Blair Peach's brother is entitled to say that there must be a jury, however difficult it may be for the coroner to conduct the inquest in those circumstances.

I only go on to say this: ultimately it is matter for the coroner, properly directing himself, to decide whether the circumstances bring the ease within paragraph (e). In our present ease Mr. Simon Brown has not taken any point about the facts. We have been invited to deal with the ease on the hypothetical circumstances which I have stated. On those circumstances, I think that this is a case where it is compulsory to have a jury.

I would allow the appeal accordingly.

JUDGMENTBY-6: BRIDGE L.J

JUDGMENT-6:

BRIDGE L.J: All counsel agree, and it is clearly right, that some limitation has to be placed on the ambit of the word "circumstances" in section 13 (2) (e) of the Coroners (Amendment) Act 1926. The key to the nature of that limitation is to be found, I think, in the paragraph's

concern with the continuance or possible recurrence of the circumstances in question. This indicates to my mind that the paragraph applies to circumstances of such a kind that their continuance or recurrence may reasonably and ought properly to be avoided by the taking of appropriate steps which it is in the power of some responsible body to take. This limitation on the scope of the paragraph may still leave it to operate in a very wide range of cases; but I can find no good reason why we should seek to restrict it any further. In particular I am quite unable to accept Mr. Simon's Brown's submission that the only circumstances to which the paragraph can apply are purely physical circumstances. I can see no sensible reason why that limitation should be imposed.

To take an example which was canvassed in the course of the argument, suppose a patient in a hospital dies from a mistaken injection of a drug in a fatal quantity, and suppose that there is reason to suspect that that happened because the system operated in the hospital for the control, issue and handling of dangerous drugs is defective. This, in my judgment, although not a physical circumstance, would quite clearly be a circumstance of the kind contemplated in paragraph (e), "... the continuance or possible recurrence of which is prejudicial to the health or safety of... any section of the public," namely those members of the public resorting as patients to that hospital.

Accordingly I turn to the application of the paragraph as so construed to the facts of the present ease. It is common ground that on the material before the coroner there is reason to suspect - no more than that - that Blair Peach died from a blow to the head struck by a police officer with an unauthorised and potentially lethal weapon. If there were reason to suspect - which certainly there is not - that it was approved police policy to issue such weapons to officers responsible for keeping order at public demonstrations of the kind with which this ease is concerned, Griffiths J. in the Divisional Court was of the opinion that the case would fall within paragraph (e). In that view, I entirely agree with him; but where I cannot, with respect, follow him is in distinguishing for present purposes between possession of such weapons pursuant to a positive policy and their unauthorised possession by individual police officers in breach of police discipline. In the one ease it would be the positive policy which would be the circumstance prejudicial to public safety, and in the other case it would be the failure of supervision to ensure that the prohibition of the use of such weapons was enforced. Either case represents, in my judgment, a relevant circumstance within paragraph (e) in the sense that, if the suspicion of the unauthorised use of a lethal weapon by a police officer is in the event confirmed, it will be reasonably open to the police authority to take appropriate steps to avoid the recurrence of such a circumstance in the future.

For these reasons I too would allow this appeal and make the orders which are sought by the appellants in these proceedings.

JUDGMENTBY-7: SIR DAVID CAIRNS

JUDGMENT-7:

SIR DAVID CAIRNS: Section 13 (2) (e) of the Coroners (Amendment) Act 1926 is not an easy provision to construe. Read literally, it might be taken to require the calling of a jury in every ease, for instance, of

death by accident, because, if the circumstances of a particular fatal accident recur, there is likely to be danger to some section of the public. This meaning cannot have been intended by Parliament because, if it had been, paragraph (d) of the subsection would have been unnecessary when it was passed and its repeal in 1977 would have had no effect.

The difficulty is to find a meaning which does not do violence to the words of the Act and which gives effect to what may be taken to have been the intention of Parliament. The reference to "continuance or possible recurrence" indicates to my mind that the provision was intended to apply only to circumstances the continuance or recurrence of which was preventable or to some extent controllable. Moreover, since it is prejudice to the health or safety of the public or a section of the public that is referred to, what is envisaged must I think be something which might be prevented or safeguarded by a public authority or some other person or body whose activities can be said to affect a substantial section of the public. I cannot find any justification for any further limitation of the meaning of the paragraph in question.

Since the coroner in this case does not seek to say that he had no reason to suspect that the death of Blair Peach may have been caused by the use by a police officer of an unlawful weapon, and since the use of such a weapon is something the continuance or recurrence of which it is the clear duty of police authorities to do everything possible to prevent, I am satisfied, like Lord Denning M.R. and Bridge L.J., that the circumstances are within the meaning of the paragraph, and accordingly that the appeal should be allowed and the decision of the coroner not to call a jury quashed, and any further order made which may be necessary in the circumstances.

R. D.

A. H. B.

DISPOSITION:

Application refused.

Application refused.

Appeal allowed with costs in Court of Appeal: appellant to have half costs in Divisional Court.

Orders of certiorari to quash coroner's decision and mandamus to continue inquest with jury.

SOLICITORS:

Solicitors: Seifert, Sedley & Co; Treasury Solicitor; Solicitor, Metropolitan Police.

Solicitors: Seifert, Sedley & Co.; Treasury Solicitor; Metropolitan Police Solicitor.