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SUPREME COURT

A

ATTORNEY-GENERAL

v.

M.J.C. SAUNDERS

B

[SUPREME COURT—Rooney, J. 11 July 1986]

Civil Jurisdiction

(Inquest—Application for order directing Resident Magistrate therefor)

Dr A. Singh for the Applicant

C

J. Small, Amicus Curiae for the Respondent

D Application by the Attorney-General pursuant to s.(30)(i) of the Inquests Act (Cap. 46) for an order directing Mr Saunders (Resident Magistrate) to hold an inquiry into the cause and circumstances connected with the disappearance of William Allan Jones (Jones). This person had some years ago, lived and worked in Fiji. In February 1985 then residing in Singapore; he left on employment transfer to Hawaii, deciding to visit Fiji en route. He arrived at Nadi Airport on 17 February stayed in Suva for two nights at the Travelodge Hotel and on the 19th travelled by bus to the Reef Resort Hotel, Sigatoka. On 20 February he hired an Avis Car for one day and returned it on 21 February at 0800 hours. That day he reported to a supervisor at the Reef Hotel that he would be leaving on Saturday 23 February 1985. He was never seen again. His personal belongings including Passport, Air Ticket, clothes (but no bathing costume), personal belonging including \$250 in various currencies were left in his room at the Reef Hotel. Exhaustive enquiries were made into his disappearance by Police with no result. He had a wife and children in Wales. There was no evidence before the Court as to the state of his marriage.

E

Relevant sections of the Inquests Act include—

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The definition of "sudden or unnatural death" is given in section 2.

"Means a death or disappearance where—

G

- (a) a person has committed suicide; or
- (b) a person has been killed by another, or by an animal or by machinery or during the course of a fire or by accident; or
- (c) a person has died under circumstances in which some other person may have committed an offence; or
- (d) a person has died, or has disappeared in circumstances which raise a reasonable presumption that he has died, and the cause of such death or presumed death is not known."

H

Section 3 reads:

"3.—(1) If an officer in charge of a police station receives information that a sudden or unnatural death has occurred, he shall immediately proceed, or shall direct some other police officer immediately to proceed to make an investigation and shall, subject to and in accordance with the instructions of the Commissioner of Police, report to a magistrate in the form prescribed. A

(2) Such a written report shall be made in accordance with the provisions of subsection (1) notwithstanding the fact that although such information as aforesaid affords reasonable grounds for believing that a death has occurred, it is impossible or impracticable to discover, recover or view the body of such deceased person". B

Section 20(1) reads:

"Notwithstanding the provisions of section 7, the Attorney-General may at any time apply to the Supreme Court for an order directing a magistrate to hold an inquest into the cause of and the circumstances connected with, any death occurring in the circumstances specified in section 3 and the magistrate to whom such direction is given shall thereupon proceed to hold an inquest in accordance with the provisions of the order and of this Act." C

The law in Fiji permits an inquest without the presence of a body. Mr Saunders' refusal was on the grounds that there was no evidence for believing or reasonable grounds that a death had occurred. D

The learned Judge examined the evidence and hypothesis that may be inferred and relevant authorities.

Held: To order an inquest would be equivalent to a finding of a sudden or unnatural death experienced by Jones, which could have significant consequences as to his estate and wife's status. On the evidence there was no "presumption either way" i.e. as to the continuance of life or death. E

Application refused.

Cases referred to: F

Watson v. England (S.C. 8 Jur. 1062).

In re Benjamin Neville v. Benjamin (1902) 1 Ch. 723.

Chard v. Chard (1955) 3 All E.R. 721.

Re Mathews (1898) P. 17. G

ROONEY, J.

Judgment

This is an application by the Attorney-General made under section 20(1) of the Inquests Act Cap. 46. It seeks an order from this Court directing M.J.C. Saunders, Esq., Resident Magistrate to hold an inquest into "the cause of and circumstances connected with the disappearance of William Allan Jones in circumstances which raise a reasonable presumption that he had died". H

Section 20(1) reads:

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B Section 3 reads:

"3.—(1) If an officer in charge of a police station receives information that a sudden or unnatural death has occurred, he shall immediately proceed, or shall direct some other police officer immediately to proceed to make an investigation and shall, subject to and in accordance with the instructions of the Commissioner of Police, report to a magistrate in the form prescribed.

C (2) Such a written report shall be made in accordance with the provisions of subsection (1) notwithstanding the fact that although such information as aforesaid affords reasonable grounds for believing that a death has occurred, it is impossible or impracticable to discover, recover or view the body of such deceased person".

Section 7 reads:

D "7.—(1) If, upon receiving all necessary reports, a magistrate shall be satisfied, without holding an inquest, as to the cause of death, he shall report to the Attorney-General the cause of death as ascertained to his satisfaction.

(2) A magistrate may hold an inquest if there is no body available, in any of the circumstances referred to in section 3.

E (3) A magistrate shall not hold any inquest under this Act if he has reason to believe that criminal proceedings against any person for having caused the death of the deceased have been, or are about to be, commenced.

(4) In all other cases, the magistrate shall proceed as soon as possible to hold an inquest but may adjourn the inquest sine die if any such criminal proceedings as aforesaid are commenced."

The definition of "sudden or unnatural death" is given in section 2.

F "Means a death or disappearance where—

(a) a person has committed suicide; or

(b) a person has been killed by another, or by an animal or by machinery or during the course of a fire or by accident; or

(c) a person has died under circumstances in which some other person may have committed an offence; or

G (d) a person had died, or has disappeared in circumstances which raise a reasonable presumption that he has died, and the cause of such death or presumed death is not known."

H

So the law in Fiji permits an inquest to be held without a body but where there is a reasonable presumption that the prepositus has died or there are reasonable grounds for believing that death has occurred. A

Jones, was an electrical engineer aged 40. Some years ago he lived and worked at Suva for Fintel which is associated with Cable and Wireless PLC by whom Jones was employed. In February 1985 he left Singapore on transfer to Hawaii and he decided to visit Fiji en route. He arrived at Nadi Airport on the 17th February, and stayed at the Travelodge, Suva on the nights of the 17th and 18th. He met some old friends in Suva and on the 19th travelled by bus to the Reef Resort Hotel, Sigatoka. B

On the 20th February at 0830 he hired a car from Avis. This was for one day. On its return it was noted that the car had travelled a distance of 231 kilometres. It is not known where Jones went in the car, but, the distance travelled, if correctly recorded, would not have permitted him to have gone as far as Suva in the east or to Ba in a north westerly direction. The car was returned at 0800 on Thursday 21st February. On the same day Jones reported to Una Murray a supervisor at the Reef Hotel that he would be leaving on Saturday the 23rd. C

Jones was not seen again by anyone in Fiji, so far as it is known. His passport, air ticket to Honolulu, clothes and personal belongings including about \$250 in various currencies including U.S. dollars, Fijian dollars, Singapore and Hong Kong dollars were left in room 224 at the Reef Resort Hotel. D

The police have made exhaustive enquiries into his disappearance, interviewing many people who saw or might have seen him during his visit to Fiji or after his inexplicable disappearance, with no positive results. It can be safely assumed, that if Jones is still alive, he is no longer in Fiji. He has vanished without trace in the circumstances outlined above. E

Jones has a wife, children and other relatives in Wales. Nothing has been placed before this Court concerning the state of Jones's marriage, or his finances prior to his disappearance or why it was that he was working abroad separated from his family. There has been exhibited a letter from his uncle, a Mr W. A. M. Jones, to the Commissioner of Police dated 14th March, 1985. This letter asks for further information and it suggests that as no bathing trunks were found among the clothes left at the Reef Resort Hotel that Jones may have drowned while bathing in the sea. It also requests guidance as to the procedures which must be followed in the event of no body being found. F

Mr Saunders has refused to open an inquest on the grounds that there is no evidence which affords reasonable grounds for believing that a death has occurred. There is evidence of the disappearance of William Allun Jones but nothing to show that, for instance, he was seen falling in the river or going out to swim in the sea or jumping off a cliff. There is no part of a body which has been recovered which raises a reasonable presumption of death. G

There are two reasonable hypotheses. Firstly, Jones may have gone swimming off the coast, drowned and his body was swept out to sea. Secondly, Jones may have arranged his disappearance and has departed from this country by some unorthodox method and is now alive and well in some other part of the world. The acceptance of either hypothesis requires a degree of speculation unsupported by any real evidence. H

A To order an inquest would be equivalent to a finding that Jones had suffered a sudden or unnatural death as that is defined by the Inquests Act Cap. 46. Such a finding would have significant consequences with regard to his estate and the status of his wife.

In *Watson v. England* (S.C. 8 Jur. 1062), decided in 1844 Sir Lancelot Shadwell V.C. declined to presume the death of a girl, then aged sixteen or seventeen, who disappeared in 1814 at Portsmouth after stating that it was her intention to go abroad.

B The learned Judge said:

"The old law relating to the presumption of death is daily becoming more and more untenable. For, owing to the facility which travelling by steam affords, a person may now be transported in a very short space of time from this country to the back woods of America, or to some other remote region where he may be never heard of again."

C In the case of *In re Benjamin, Neville v. Benjamin* (1902) 1 Ch. 723, a young man of 24 left Aix-la-Chapelle for London on 15th September 1892. He was not heard of again. Advertisements were published in all the colonies and in other parts of the world. On the 1st February, 1902 the Chancery Division presumed that he was dead. That was ten years later.

D The third case to which I have been referred is *Chard v. Chard* (1955) 3 All E.R. 721. It was held that any presumption of continuance of life which there may be is a presumption of fact and not of law. Sachs J. said at 728:

E "My view is thus that in matters where no statute lays down an applicable rule, the issue whether a person is, or is not, to be presumed dead is, generally speaking, one of fact and not subject to a presumption of law. To that there is an exception which can be assumed without affecting the present case. By virtue of a long sequence of judicial statements, which either assert or assume such a rule, it appears accepted that there is a convenient presumption of law applicable to certain cases of seven years' absence where no statute applies. That presumption in its modern shape takes effect (without examining its terms too exactly) substantially as follows. Where as regards "A B" there is no acceptable affirmative evidence that he was alive at some time during a continuous period of seven years or more, then if it can be proved first, that there are persons who would be likely to have heard of him over that period, secondly, that those persons have not heard of him, and thirdly, that all due inquiries have been made appropriate to the circumstances, "A B" will be presumed to have died at some time within that period. (Such a presumption would, of course, be one of law and could not be one of fact, because there can hardly be a logical inference from any particular set of facts that a man had not died within two thousand five hundred and fifty-five days but had died in two thousand five hundred and sixty.)"

G I may mention one other case, that is *re Mathews* (1898) p. 17 where the death of a man then aged 73, who disappeared from his home at Chatham Road, Wandsworth was presumed three years later.

H On the evidence available there can be no presumption either way. I cannot in the circumstances give a direction to the magistrate to hold an inquest.

Although enquiries have established that Jones is no longer in Fiji, he may well be living elsewhere. It may prove worthwhile extending the investigation to Singapore. It should be possible to obtain further information as to Jones's social contacts during his sojourn there and his financial affairs. Such enquiry may assist in solving a baffling mystery. A

Application refused.

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