

**R. v. H.M. CORONER, ex parte STRAITS BARGE  
COMPANY LIMITED**

SUPREME COURT (Schofield, C.J.): May 7th, 1998

*Coroner—judicial review—review of verdict—court may grant judicial review without authority of Attorney-General on grounds of error on face of record, fraud, or excess or refusal of jurisdiction*

*Coroner—inquest—remit of jury—under Coroner Ordinance, s.8(2) jury’s verdict to be confined to deceased’s identity and time, place and manner of death—not to give further opinion on cause of death which apparently determines civil liability, contrary to English Coroners Rules 1953, rr. 27 and 33—court may excise offending finding from record on judicial review*

The applicant sought judicial review of an inquest verdict.

The applicant was a company employed to flush out a fuel line at a petroleum depot. It used a barge for this purpose on which the deceased was employed during the flushing-out operation. This operation was being carried out when, due apparently to a malfunction, an explosion occurred, killing the deceased.

At the coroner’s inquest, the jury found that the cause of death had been the explosion, itself caused by igniting petroleum products. It also found, *inter alia*, that “the loss of pressure, as a result of the mechanical failure of [the barge], caused a back-flow of petrol on to the ship which was not prevented by the non-return valve and caused an explosion . . .”

On its application for judicial review of the inquest findings, the applicant submitted that although the jury had properly given its verdict on the deceased’s identity and the time, place and manner of his death according to s.8(2) of the Coroner Ordinance, it had contravened rr. 27 and 33 of the English Coroners Rules 1953 (which applied in Gibraltar by virtue of r.2 of the Gibraltar Coroner Rules) in that it had improperly expressed a further opinion. By commenting on the cause of the explosion, the jury had appeared to determine an issue of civil liability, which was beyond its remit.

**Held**, allowing the application:

(1) The Supreme Court had the power to grant judicial review of the decision of the Coroner’s inquest without the authorization of the Attorney-General when the grounds for review were error on the face of the record, fraud or an excess of or refusal of jurisdiction (page 298, lines 24–27).

(2) In this case there was an error on the face of the record, because the jury's verdict had gone too far. Under s.8(2) of the Coroner Ordinance, it was sufficient for it to give its verdict on the deceased's identity and the time, place and manner of his death, *i.e.* explosive incineration and igniting petroleum products. Under the English Coroners Rules 1953, rr. 27 and 33, the underlying cause of the explosion was a matter for a court determining civil liability and not for the jury. The offending words of their finding would accordingly be excised from the record (page 299, lines 15–25).

**Case cited:**

(1) *R. v. Surrey Coroner, ex p. Campbell*, [1982] Q.B. 661; [1982] 2 All E.R. 545, applied.

**Legislation construed:**

Coroner Ordinance (1984 Edition), s.8(2): The relevant terms are set out at page 298, lines 30–33.

Coroner Rules (1984 Edition), r.2: The relevant terms of this rule are set out at page 298, lines 35–38.

Coroners Rules 1953 (S.I. 1953/205), r.26: The relevant terms of this rule are set out at page 298, lines 40–43.

r.27: The relevant terms of this rule are set out at page 299, lines 1–6.

r.33: The relevant terms of this rule are set out at page 299, lines 7–8.

*Ms. G.M. Guzman* for the applicant;

*A.A. Trinidad, Senior Crown Counsel*, for Her Majesty's Coroner for Gibraltar;

*A.A. Vasquez* for the estate of the deceased;

*D.J.V. Dumas* for Shell Co.

35 **SCHOFIELD, C.J.:** Shell Co. imports petroleum into Gibraltar. The petroleum is discharged from tankers at the Shell discharge point, which is at the western arm of the North Mole and is pumped through almost 3 km. of pipeline to the Williams Way Fuel Depot by Catalan Bay Road. The Depot is almost 30m. above sea level so there has to be a valve, called a non-return valve, at the discharge point to prevent a back-flow of petroleum should the pressure to pump the fluid through the pipe become inadequate.

40 After each discharge of petroleum the fuel line is cleared of petroleum by being flushed with water. Water is pumped under pressure through the pipeline. This operation was carried out by the Straits Barge Co. Ltd. from their vessel, a water tanker called the *Brunito*. The *Brunito* is equipped with a pipe which is connected to the fuel pipeline and water is pumped from the vessel through the pipeline. Shell Co. sub-contracts a company called  
45 Lampways Ltd. to carry out the discharge and purging operations.

On October 14th, 1996, the crew of the *Brunito* took her to the discharge point on the North Mole to carry out a purging operation of the petroleum pipeline. One of the crew members was David Pickup. Once the hosepipe from the *Brunito* was connected to the fuel pipeline, Mr. Pickup started the pump engine on board the *Brunito*. From there things began to go wrong and there was an explosion on board the *Brunito*. Tragically, David Pickup died in that explosion.

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At an inquest held over several days before the Coroner and a jury, the jury determined, on February 22nd, 1997, that the cause of death was “(a) explosive incineration, and (b) igniting petroleum products.” The jury also put their signatures to the following finding:

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“That the said David Pickup on the afternoon of October 14th, 1996 was on board *M.V. Brunito* with the purpose of displacing petrol from the Shell Pipeline into storage tanks. That the loss of pressure, as a result of a mechanical failure of the *M.V. Brunito*, caused a back-flow of petrol on to the ship which was not prevented by the non-return valve and caused an explosion on board the *M.V. Brunito*. That the said David Pickup was instantly killed by the explosion and thrown overboard.”

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In this application for judicial review, Straits Barge Co. Ltd. seeks an order that the second sentence of this finding be deleted from the inquest record because it offends the rule against a Coroner’s inquest determining civil liability.

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This court has power to grant judicial review of an inquest verdict without the authorization of the Attorney-General where the grounds are error on the face of the record, fraud or an excess or refusal of jurisdiction (see *R. v. Surrey Coroner, ex p. Campbell* (1)).

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The functions of a jury at an inquest are set out in s.8(2) of the Coroner Ordinance as follows:

“After hearing the evidence the jury shall give their verdict and certify it by an inquisition in writing, setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when and where the deceased came by his death.”

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By r.2 of the Coroner Rules, made under s.25 of the Ordinance, the English Coroners Rules 1953 “apply in Gibraltar *mutatis mutandis*, in so far as they may be applicable and with such modifications as the circumstances of Gibraltar may require: Provided that paragraph (c) of rule 26 of those rules shall not apply.” The following provisions of r.26 of the Coroners Rules 1953 do apply:

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“(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely:—

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(a) who the deceased was;

(b) how, when and where the deceased came by his death . . . .”

Rules 27 and 33 of the Coroners Rules 1953 apply to an inquest in Gibraltar. Rule 27 reads:

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“Neither the coroner nor the jury shall express any opinion on any matters other than those referred to in the last foregoing Rule:

5        Provided that nothing in this Rule shall preclude the coroner or the jury from making a recommendation designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held.”

Rule 33 reads: “No verdict shall be framed in such a way as to appear to determine any question of civil liability.”

10        It is argued by the applicant that the words set out in the verdict of the jury of which it complains amount to an expression of opinion on the cause of the explosion. The cause of the explosion is to be the subject of civil proceedings and any expression of opinion on the cause of the explosion trespasses upon the question of civil liability and offends against r.27 and particularly r.33.

15        Mr. Trinidad, acting for H.M. Coroner and having taken specific instructions from him, acknowledges that the verdict went too far. In my judgment he is right. The cause of death was found to be (a) explosive incineration, and (b) igniting petroleum products. The cause of the explosion is a matter for the court determining civil liability.

20        As the error is on the face of the record, I can rectify it in these proceedings and I do so by ordering that in para. 2 of the verdict dated February 22nd, 1997, the following words be deleted: “That the loss of pressure, as a result of mechanical failure of the *M.V. Brunito*, caused a back-flow of petrol on to the ship which was not prevented by the non-return valve and caused an explosion on board the *M.V. Brunito*.”

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*Order accordingly.*