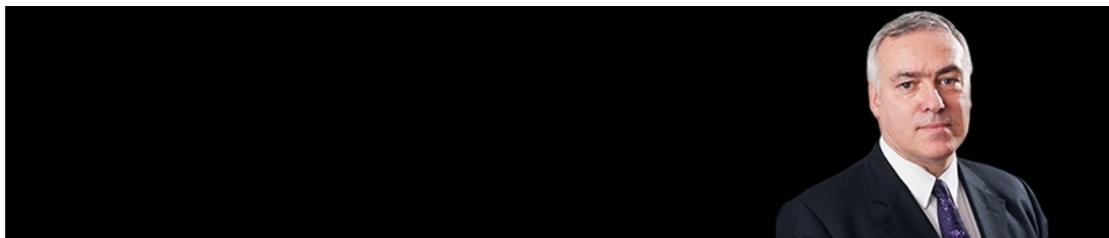


Picture 1: Inquests by John Cooper, Hart (2011)

INQUESTS
John Cooper, QC.
Hart Publishing, 2011
ISBN: 978-1-84946-037-8
Book review by Sally Ramage, editor of *The Criminal Lawyer*, Bloomsbury

The author, John Cooper, QC. is an Honorary Visiting Professor of Law at Cardiff University, South Wales, UK.



Picture 2: John Cooper, QC.

The book *Inquests* is undoubtedly a practitioners' book- very useful, instructive and full of gems that only a practitioner can have knowledge of. It includes 17 chapters and several appendices, taking one through the process of the Coroners' court system. As are all the topics in this Hart series, it is not a tome but a simple text of 200 pages, light enough to take anywhere and the publisher's wisdom in producing it in paperback will be repaid.

Inquests are hugely interesting to lawyers today, in light of the new legislation and also because, we are all filled with curiosity about death and all related matters, it appears. No doubt, the media has made us aware of inquests especially with regard to the many recent accidents that have beset our peoples in the United Kingdom, notwithstanding the strong emotions about the death of the former HRH, Diana, Princess of Wales who so tragically died in France in a car accident. The reviewer's interest in the topic goes back to 1851 because uncle-in-law, Solicitor Roderick Davies (deceased) had been a Deputy Coroner in Manchester. It is therefore delightful to see that John Cooper has included a short chapter of the history of Coroners courts. His is a unique book, written at an appropriate time as the United Kingdom's new Coalition government has seen fit to disband the new office of Chief Coroner and as Cooper quips:

'The office of Chief Coroner has probably become, with its abolition, one of the shortest lived judicial offices in legal history'

Super visum corporis

According to precedent, there could be no good inquest unless the Coroner and the jury were both present at the same time and the oath was administered by the former to the latter *super visum corporis*. The view is part of the evidence. If a Coroner did not adhere to the authority he used to be fined. Of course, the whole matter of Coroners courts can be argued to have been based on fiduciary interests of the state and not merely a matter of criminal law. Even today, those who die without a Will and whose relatives are unknown sometimes leave fortunes that go to the State and where the deceased owes monies, an action of 'trover for the conversion of the property, of debt on simple contract, or in a *scire facias* for debts of record, can be brought provided the petitioner shows his title by setting out the grant and inquisition.

Felo de se

In the days of old when suicide was a criminal offence, it was formally usual for the Coroners to grant a warrant, directing the constables and churchwardens of the parish where the inquest was held, to cause the body of a *felo de se* to be buried in a public street or highway or cross-road and by driving a stake through his heart. This early English common law practice was in place because an adult who committed suicide was deemed to have committed a felon and the crime was punishable by forfeiture of property to the king. and had, what was considered, a shameful burial. This law was made redundant because of its viciousness, after which time it was illegal for a Coroner to issue a warrant directing the interment of such deceased *in felo de se* with a stake through the deceased' body. It is noted that the law relating to *felo de se* applied also to a person who was killed, or who died by other causes whilst committing a crime.

Counsel at Coroners Courts

Lawyers were not always allowed to represent parties at a Coroners Court and this was argued in the case of *Cox v Coleridge*.¹ Evidence before the Coroner may take the form of a dying declaration.² Dying declarations, if received in the Coroners Court could have the greatest weight with juries.³

Obstructing a Coroner

The Coroner must not be obstructed in the carrying out of his duties In *R v. Purcy*⁴ the Purcy family were convicted of obstructing the coroner in the execution of his duty. Mrs Purcy had given birth to a baby boy on 3 November 1932 and on 16 February 1933, the dead body of the baby was found in a hedge. Although a medical doctor had pronounced that the child had died of natural causes (bronchial-pneumonia, accelerated by lack of attention) the Coroner felt that he had a duty to investigate this death and the family were charged with obstructing the coroner and were convicted and appealed. The Court of Appeal decided that it was not proved that there was a duty for a coroner's inquest and the appeal was allowed. Any disposition of a corpse with intent to obstruct or prevent a coroner's inquest, when one ought to be held, is an offence at common law.⁵ It must be established that there was a duty to hold an inquest. It is not sufficient to prove concealment of a corpse, the intent must be proved.

Bribing a Coroner

A Coroner must not be bribed in order that he may not carry out his duty properly because a Coroner is in a position of trustee to perform a public duty and bribing a Coroner is an offence in both parties.⁶



Picture 3: One item from the Staffordshire Hoard

¹ *Cox v Coleridge* (1822) 1 B & C 37, 1 Dow & Ry MC 142, 2 Dow & Ry KB 86, *R v Borron* (1820) considered.

² As in *R v. Crockett*, 4 C. & P. 544, where the declaration was: 'That damned man has poisoned me.'

³ See also, the case of *R v. Spilsbury*, 7 C. & P. 190.

⁴ [1933] All ER Rep 630.

⁵ *R. v. Stephenson* (1884) 13 Q.B.D. 331; *R. v. Price* (1884) 12 Q.B.D. 247.

⁶ *R. v. Whitaker* [1914] 3 K.B. 1283, 10 Cr.App.R. 245, CCA. See also *R. v. Harrison* (1800) 1 East P.C. 382).

Treasure troves go before the Coroner

It is still the law in England that treasure troves are matters for the Coroner of the jurisdiction in which it is found and only recently the Stafford Hoard bore witness to this law.⁷ There had to be an inquest on the find, as per statute and the Inquest was conducted by Mr Andrew A. Haigh, Her Majesty's Coroner for Staffordshire (South) Coroners jurisdiction, at the Coroners' Court, Beech Tree Lane, Cannock, WS 11 1 AY.

Inquests of Murders: Christopher Foster's case

Where a person is charged with causing someone's death by murder or manslaughter, for example, then the inquest is adjourned until the person's trial is over.

The inquest into death has a very limited role, as provided by the *Coroners Act 1988, s 11*, and the *Coroners Rules 1984*, rule 36. If the evidence is sufficient, it has to answer four questions, and also to provide the particulars needed to *register a death*. This is the role of *the jury* (if there is one in the particular case), or of the coroner (if there is not).

Sometimes, the Coroner will allow a burial with a temporary death certificate. The Coroners Officer will confirm the identity of the deceased and the Coroner will issue a temporary death certificate, which is accepted by most funeral institutions. He may also release the body. Sometimes a Coroner will ask the family to attend, for example to provide background information. The Inquest is then adjourned for the Coroner to complete his enquiries.

In such inquests, the full and strictest force of the law is displayed. The complex cases of the deaths of Christopher Foster, his wife Jill Foster and their daughter Kirsty Foster, is a supreme example of the due process in the Coroners Court. The Coroner was John Ellery, Coroner for the Northern District of Shropshire who conducted three separate inquests. Rule 36 of the Coroners Rules 1984 states that the evidence of the inquest is to be directed to the following matters: who the deceased was; how, where and when the deceased came by his death; and the particulars concerning the death as required by the Births and Deaths Registration Act 1953. In the Fosters' inquests, the police gave evidence and were subsequently cross-examined by counsel representing Mr Foster's brother, Andrew Foster. Detective Superintendent Jon Groves of the West Mercia Police Force gave the background of the deaths.⁸

Expert evidence

Schedule 5, Paragraphs 1 and 2 of the 2009 Coroners and Justice Act deal with the Coroner's power to summon witnesses. John Cooper, QC, deals with these matters in chapter 17 of his book.

The Home Office Pathologist Alexander Jan Oldrich Kolar was cross-examined by counsel for Andrew Foster. The Pathologist had attended at the scene of the arson and murders. He told how he had assisted crime scene police officers in the careful removal of debris from around one torso and related his findings to the court. He told how immediately underlying this body, another body was found. The body was badly burnt but he found teeth and was unable to identify demographic details. Then later officers found the remains of a third body and sent for the pathologist. He determined that one body's skull was shot with no evidence of soot staining, meaning that death occurred before the arson was committed. The pathologist said that the third body had been so destroyed by fire that he was unable to identify any female organs but that the part of the skull recovered indicated a gunshot wound and 24% of carboxyhaemoglobin in blood obtained from the liver did not necessarily indicate that person number 3 was alive when the fire was started because the slight elevation of the carboxyhaemoglobin detected in the liver remains could be due to failure of haemolysis. A Home Office forensic firearms expert also gave evidence. He confirmed that Jill Foster had been shot in the back of the head, above and behind the right ear, indicating the passage of a bullet from back to front.



Picture 4: Police on guard outside burnt-out Osbaston House one week after the deaths murders and suicide at Osbaston House.

Gunshots

⁷ The Stafford Hoard is the largest collection of Anglo-Saxon gold and silver metalwork ever found in world. It was discovered in a field near the village of Hammerwich, near Lichfield, in Staffordshire, England on 5 July 2009. The Staffordshire Hoard totals 5.094 kilos of gold, 1.442 kilos of silver and 3,500 cloisonné garnets. The Hoard contains 3,490 metal fragments.

⁸ See UK national newspapers, eg. Times, Telegraph;

The firearms cartridge cases on site and near the bodies were identical to those fired from Foster's gun found near Foster's body, a point 22 rim-fire calibre weapon, rifle DMB18. Further, a forensic anthropologist and archaeologist, Julie Ann Roberts gave evidence. She had assisted in excavating body three's remains and to assist in formulating a strategy for the recovery of any body parts and small fragments of burnt bone; to brief and supervise the search teams during the recovery of the fragments from the excavated fire debris; to make a preliminary examination of the fragments at the scene and to attend the mortuary at Sandwell Hospital, West Bromwich, to undertake a series of anthropological examinations on the bodies and bone fragments recovered from the fire scene. The Fosters' General Practitioner also gave evidence and his evidence was that when Christopher Foster had visited his surgery and made him aware of the Fosters' business difficulties he was not psychotic and so there was no consideration of sectioning him under the Mental Health Act. Foster's colleague and friend Milivoj Peter Grknic also gave evidence. He described their developing friendship and work relationship. His feelings were that Foster felt that he was not going to let the liquidator of his business have his assets and so he destroyed the lot, including his wife and daughter and himself in vindictiveness. Another business colleague Mark Anthony Bassett of Pontypool, South Wales also gave evidence. He gave a statement that related how Christopher Foster said to him:

'I will top myself before that; they will carry me out of the house in a box.'

Mark Anthony Bassett related how Christopher Foster had said, after a court hearing, that his wife and daughter had become accustomed to a certain standard of living and a certain quality of life and it was Foster's opinion that they would not be able to cope if they needed to take a few backward steps. Then the police firearms licensing officer gave evidence about the licensing system. He confirmed that the police have procedures in place should they become aware of the change of suitability of individuals to be firearms certificate holders but in this case they had not been made aware of the change of Mr Foster's circumstances and so procedures were not invoked. When a firearms license is due for renewal, the applicant's GP must disclose medical details to the police and answer questions regarding the applicant's medical health, disabilities and drug and alcohol-related conditions. In particular the GP is asked to disclose if the gun licence applicant had attended his GP for treatment for depression or for any other kind of mental or nervous disorder. The person who had sold ammunitions and a gun to Foster also gave evidence. Since Foster's last application had been in 2005, the GP was not expected to tell the police anything until Foster reapplied for a licence in 2008.



Picture 5: Osbaston House as it looked before Foster destroyed it.

Finally, Patrick Kelly, the financial investigator with West Mercia Constabulary, gave the most pertinent evidence. Armed with the relevant court orders he was able to piece together Foster's complex and fraudulent lifestyle. Furthermore there were issues with properties in the UK and in Cyprus, which were complex. He stated that Foster's assets of his house before the fire, motor vehicles, jewellery, cash in the bank and house contents were valued at £3.1 million but that Foster's liabilities just before he died totalled £4.44 million, of which £3 million was wanted by the liquidators immediately, Foster having been given two years to settle his debts. In Kelly's opinion, this must have been a horrendous situation since Foster no longer had income coming in, but had spent all his money on a Bentley car, expensive guns, two Rolex wristwatches and a very lavish lifestyle of expensive horses, art paintings, and first class holidays. Although he had been forced to sell some of his guns to Avalon Guns for £40,000.00, he had kept six shotguns and a .22 rifle. Another witness to give evidence was James Alan Fairley Walker, a chartered accountant and chairman of several companies. His evidence related to the dispute between Ulva Ltd, of which Foster was director, and DRC Ltd, a subsidiary of SWP Group, of which Walker is Chairman. The caselaw report

on the matter is in the public domain. Peter Keough, High Court Enforcement Officer, also gave evidence.



Picture 6: Sole media van and police vehicles outside Osbaston House

Coroner's verdict

Chapter 9 of the book *Inquests* deals with the subject of the verdict, which must comply with European jurisprudence, and the standard of proof is on the balance of probabilities, the civil standard.⁹

The verdict will not, by Rule 42, be framed so as to appear to determine any question of criminal liability or civil liability. In the Foster murders, the Coroner's verdict was drafted on 19 February 2009, the inquest conducted on 2-3 April 2009. In the Foster case, the Coroner said that the Fosters returned from their neighbours' party before midnight and at 3.12 in the morning, the CCTV at Foster's Osbaston House showed him active outside the house for 37 minutes until at 3.49 am when he re-entered his house. Between 3.12 am and 3.17 am he must have shot and killed the three horses and all four dogs. Foster had pumped all the kerosene in the central heating storage tanks into the house and had lit it. Expert evidence was heard that the central heating tank could only collapse in the fire because it had been empty after the house fire was started. Foster had set out methodically all the fires he would set- the oil tank in the house, the oil in the stables and in the kennels. The power failure in the house occurred at 3.44 am which was when Foster must have ignited the house fire and at 3.44 am Foster is seen on the house CCTV system carrying buckets outside at 3.47 am and the first flash of the stable fire was seen on the CCTV. At 3.48 am the doves in the dovecote flew away, the house being afire for some 5 minutes now. Then Foster went back into the blazing house and died from smoke inhalation some ten minutes later with his gun near him. There was just one round of ammunition left in the gun. The CCTV evidence was the most reliable evidence the police had. There was no relevant laptop or computer evidence that survived the fire. The Coroner recorded the verdicts of unlawful killings of Mrs Foster and Kirsty Foster and the deliberate killing of Foster by himself.

Remedies and appeals of inquest decisions

The above is the heading of chapter 12 of Cooper's book *Inquests*. This chapter deals with the reforms contained in the 2009 Coroners and Justice Act. The Administrative Court can consider, on application, whether the Coroner's decision was legal or ultra vires; whether there was an error of law or whether the Coroner's decision was perverse and by Rule 54.2 of the Civil Procedure Rules, the Administrative Court can quash the Coroner's decision, provided Pre-Action Protocol had been strictly followed. In the proceedings, *Chief Constable of Staffordshire v. HM Coroner for Coventry*, March 2011, the jury had found that the accidental death in custody of M, an alcoholic, had been aggravated by neglect. The High Court Judge disagreed.¹⁰ The court said that the jury should take a commonsense approach and the real test was whether there had been an opportunity of rendering care, which could have prevented death.

Conclusion

Inquests by John Cooper, QC. is a very valuable book on a topic, which is not written about enough. It has an index and another detailed index and the table of cases is most impressive, being international, substantial and up-to-date. There is also a table on international statutes and a table of Civil Procedure

⁹ See *Miller v. Minister of Pensions* [1947] 2 All ER 372,374.

¹⁰ *R v North Humberside Coroner ex parte Jamieson* [1995] QB 1 CA.

Rules, Coroners Rules and Criminal Procedure Rules and a comprehensive index. The splendid thing about this book is that it can be relied on, as vouched for by the foreword written by Sir Igor Judge, Lord Chief Justice of England and Wales. The Internet cannot be relied on, especially as writings are often not updated, but in this little volume is a comprehensive and thoroughly recommended handbook on Coroners Courts.

ENDS+