

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT LERWICK

[2016] FAI 10

B14/16

DETERMINATION

BY

SHERIFF PHILIP MANN

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES
(SCOTLAND) ACT 1976

Into the death of

MRS PATRICIA JANETTE WISHART

For the Crown: Mr Duncan MacKenzie, Senior Procurator Fiscal Depute

Lerwick, 19 July 2016

The Sheriff, having heard evidence on 8 July 2016 led by Mr MacKenzie and submissions by him on behalf of the Crown, having made avizandum and now having resumed consideration of the matter Finds and Determines as follows:-

- (a) In terms of Section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, Mrs Patricia Janette Wishart, aged 62 years (date of birth 21 May 1952) died in the course of her self-employment at about 1830 hours on 6 March 2015 at Mid Town, East Houlland, Bixter, Shetland
- (b) In terms of Section 6(1)(b) of the said Act, Mrs Wishart's death occurred as a result of chest and abdominal injuries. The injuries were caused by the deceased having been pinned down and struck several times by a heavily pregnant cow

which was startled by the deceased entering its pen with a view to checking on its condition.

- (c) In terms of Section 6(1)(c) of the said Act, the accident which resulted in Mrs Wishart's death might have been avoided if she had taken the precaution of entering the pen by a doorway which happened to give access to the side of the particular pen. This would have allowed her to approach the cow from its side or rear, thus giving the cow warning of her approach and lessening the risk of the cow being startled.
- (d) In terms of Section 6(1)(d) of the said Act, there were a number of factors which, together, constituted a defect in the system of working adopted by the deceased, contributing to the accident which caused her death. These were as follows: -
1. The tethering arrangement was such that the cow was able to move too far in both a forward and sideways direction. In this regard, the Health and Safety Executive recommend a rake and crush arrangement which need not be expensive to set up.
 2. The deceased entered the pen head on to the cow, which would have been interpreted by the heavily pregnant animal as a threat.
 3. The pen was an ad hoc construction of horizontal scaffolding poles jointed at various heights. The cow was able to move forward through the scaffolding railings but not wholly outwith the pen.

As a result, as the deceased entered the pen by ducking between two horizontally placed scaffolding poles she startled the cow which lost its footing and landed with its body partially through the two scaffolding poles pinning the deceased to the lower one. The cow then struck the deceased several times with its feet as it tried to regain its footing.

(e) I have nothing to add in terms of Section 6(1)(e) of the said Act

Note

1. I heard the evidence in this case on 8 July 2016. Oral evidence was given by Police Constable Mark Bryant, Detective Constable Rebecca Massey and Mr Christopher Copeman, an inspector with the Health and Safety Executive based in Aberdeen. Affidavit evidence was given by Caroline Hinton, a general medical practitioner with Bixter Health Centre, Bixter, Shetland, who attended the deceased and pronounced life extinct at 1710 on the date in question. Affidavit evidence was also given by Justine Nkonge, a locum pathologist at the University of Aberdeen Forensic Medicine Unit who carried out a post mortem examination of the deceased.
2. The deceased's husband, Robert Andrew Wishart, had witnessed Mrs Wishart's accident. He beat the cow away from Mrs Wishart and managed to pull her from the pen into an open area of the byre where he immediately administered cardiopulmonary resuscitation. He managed to bring Mrs Wishart round on two occasions before she succumbed to the effects of her injuries and died in his presence. I was advised that Mr Wishart, understandably, was too upset to give evidence in

person at the inquiry. His evidence was given hearsay by police constable Bryant who had taken his statement, and noted it in his notebook, shortly after the accident.

3. There is nothing that I can usefully add by way of narrative to the formal determinations set out above. Suffice to say that farming is an inherently dangerous industry. It is very easy to counsel perfection after the event and, with the benefit of hindsight, to point out errors of judgment and deficiencies in working practices that are not necessarily at all obvious to those who are engaged in the industry as a way of life. It is testament to the care taken by Mrs Wishart and her husband in the running of their crofting business that they were engaged in it together for many years without major incident. It is tragic that their long and harmonious personal and working life together has been brought to an end in such a sudden and unforeseen way by an accident the likes of which could, but for the grace of God, strike at anyone at any time in this particular industry. All that we can hope for is that any publicity given to this case will encourage farmers and crofters to pay attention to the published advice of the Health and Safety Executive and the National Farmers Union who, I am told, in the week when this inquiry took place launched a campaign to raise awareness of the dangers which exist in the industry.
4. In closing, I would like, once again, to associate the court with the condolences expressed by Mr Mackenzie to Mr Wishart and his family for the sudden and tragic loss of Mrs Wishart.