

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

FAI 2014 4

*INQUIRY HELD UNDER
FATAL ACCIDENTS AND
SUDDEN DEATHS*

INQUIRY (SCOTLAND)

ACT 1976

SECTION 1(1)(a)

SECTION 1(1)(b)

DETERMINATION by Sheriff Susan A Craig,
Solicitor Advocate, Sheriff of Lothian and
Borders at Livingston into an Inquiry held at
Livingston on THE SEVENTH DAY OF
FEBRUARY TWO THOUSAND AND
FOURTEEN into the circumstances of the
death of JOHN REID

Livingston 7 February 2014

The Sheriff, having resumed consideration of the Fatal Accident Inquiry into the death of
John Reid, determines in terms of Section 6 of the Fatal Accidents and Sudden Deaths
Inquiry (Scotland) Act 1976 as follows:

- (1) **In terms of section 6 (1) (a):** that John Reid (b.30.6.27) of Ballencrieff Farm, Bathgate,
died at 1755 hours on 4 December 2011 at Forth Valley Hospital, Larbert.
- (2) **In terms of section 6 (1) (b):** that the cause of death was (a) abdominal and chest
injuries and (b) a farm vehicle accident.
- (3) **In terms of section 6 (1) (c):** that there were no reasonable precautions whereby the
death might have been avoided.
- (4) **In terms of section 6 (1) (d):** that there were no defects in any system of working
which contributed to the death.

(5) **In terms of section 6 (1) (e):** that there are no other facts relevant to the circumstances of the death in respect of which any determination falls to be made.

NOTE

INTRODUCTION

[1] This Fatal Accident Inquiry called before me at Livingston Sheriff Court on 15 and 22 January and 5 February 2014. It concerned the death on 4 December 2011 of John Reid, late of Ballencrieff Farm, Bathgate.

[2] Mr Reid was a self-employed farmer and was a partner together with his wife and son in the firm of J Reid (the “firm”). As it appeared that his death occurred in the course of his engagement in his occupation the Inquiry was held in terms of section 1(1) (a) (i) of the 1976 Act. That provides

“1 (1) Subject to the provisions of any enactment specified in Schedule 1 to this Act and subsection (2) below, where -

(a) in the case of a death to which this paragraph applies -

(i) it appears that the death has resulted from an accident occurring in Scotland while the person who has died, being an employee, was in the course of his employment or, being an employer or self-employed person, was engaged in his occupation as such;

.....

the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected shall investigate those circumstances and apply to the sheriff for the holding of an inquiry under this Act into those circumstances.”

[3] The purpose of an Inquiry is for a Sheriff to make a determination setting out the following circumstances of the death so far as they have been established to the Sheriff’s satisfaction -

- (a) where and when the death and any accident resulting in the death took place [section 6 (1) (a)];
- (b) the cause or causes of such death and any accident resulting in the death [section 6 (1) (b)];
- (c) the reasonable precautions, if any, whereby the death and any accident resulting in the death may have been avoided [section 6 (1) (c)];
- (d) the defect, if any, in the system of working which contributed to the death or any accident resulting in the death [section 6 (1) (d)]; and
- (e) any other facts which are relevant to the circumstances of the death [section 6 (1) (e)].

[4] The court proceeds on the basis of the evidence placed before it. Although described as an inquiry the sheriff’s powers do not go beyond making a determination in relation to the circumstances established to his or her satisfaction by such evidence led following investigation by the procurator fiscal and any other party, if so advised.

PARTIES TO THE INQUIRY

[5] At the Inquiry parties were ably represented as follows:

- The Crown: Brian Robertson, Procurator Fiscal Depute
- For the firm: Lindsay MacNeill, Solicitor

I am grateful to all of them for their efficient conduct of the Inquiry and their careful, clear and helpful submissions.

THE EVIDENCE

[6] Many of the facts were agreed by the parties and incorporated into a Joint Minute which was read into the record at the outset of the Inquiry. The following witnesses gave evidence, some by giving oral evidence in person and others by affidavit evidence which was read into the record:

- Mrs Morag Reid, wife of John Reid
- Brian Reid, son of John Reid and driver of the vehicle involved in the accident
- Diane McQuade, Scottish Ambulance Service
- Dr Nina Maryanji, Forth Valley General Hospital
- Alison Blagg, friend of John Reid
- Police Sergeant Keith Denholm, Police Scotland,
- Paul Robertson, Vehicle Inspector, VOSA
- Police Constable Alexander Sturrock, Police Scotland
- Police Constable Jack McBurnie
- Katie Dunlop, HSE Inspector
- Richard Wilson, HSE Specialist Inspector – Mechanical Engineering

FINDINGS IN FACT

[7] The following facts were admitted or proved.

[8] John Reid was born on 30th June 1927 and resided latterly at Ballencrieff Farm, Bathgate, West Lothian, EH48 4LD. As at 4th December 2011 he ran a dairy farm in Partnership with his wife, Morag Reid and his son, Brian Reid.

[9] In the coldest six months of each year the dairy herd slept in doors at night in the cattle shed. That was tended to twice daily by Mr Reid and Brian Reid. Manure would be scraped from the floor and then fresh hay spread on the floor as bedding for the cattle.

[10] For at least eight years prior to Mr Reid's death he and Brian Reid had used the same machinery and process for cleaning out the byre and spreading the hay. The system of work that they used was clear and well understood by each of them. It was a safe system.

[11] Shortly before 16:30 on the date of the accident Mr Reid and Brian Reid took the cattle out of the cattle shed and into the milking parlour for milking. That was in accordance with their established system of work.

[12] The doors to the milking parlour were shut once the herd was inside. Brian Reid left the parlour to collect the tractor used to scrape the manure from the floor, leaving Mr Reid inside the parlour to begin preparing the cows for milking.

[13] Once Brian Reid had scraped the manure from the floor of the shed with the first tractor, he drove a Zetor Crystal tractor, registration mark B789 LSG, which had a straw spreader attachment at the rear, through the passageway between the parlour and the cattle shed, loaded a bale of hay onto the attachment and reversed the tractor into the back right corner of the cattle shed.

[14] Brian Reid did not see Mr Reid in the cattle shed. Based on the established system of work Brian Reid had no reason to expect him to be there.

[15] Once at the back corner of the cattle shed Brian Reid engaged the spreader and drove in a straight line forward, towards the front left corner, at very slow speed. He was driving at no more than around two or three miles per hour.

[16] While carrying out the spreading operation Brian Reid looked through the front windscreen for the majority of the drive forwards, but periodically checked out the back window of the tractor to make sure the hay was spreading properly. Up until he became aware that there had been an accident Brian Reid did not see Mr Reid in the cattle shed during the spreading operation.

[17] Repeating the exercise with the second bale of hay, as Brian Reid was driving forward spreading hay near the centre of the cattle shed he felt the tractor go over what he described as an “unusual bump”.

[18] Alarmed, Brian Reid stopped the tractor near the entrance of the shed and looked back in the direction he had felt the bump. He saw his father on the ground. Brian Reid could immediately tell that his father was injured and in significant pain. He went to his father and tended to him as best he could.

[19] An ambulance was called at 16:47 and arrived at Ballencrieff Farm at 17:01. Mr Reid was treated by a paramedic, Diane McQuade, within the cattle shed, and later within the rear of the ambulance.

[20] Morag Reid, Mr Reid’s wife, was summonsed, and she stayed with her husband until he was taken to hospital by ambulance.

[21] The ambulance left the farm at 17:31. Mr Reid was alive but unconscious and was taken to Forth Valley Hospital in Larbert, where all attempts to save him were unsuccessful.

[22] Mr Reid died at 17:55 and his life was formally pronounced extinct at 18:09 by Doctor Nina Maryanji.

SUBMISSIONS

[23] Both Mr Robertson and Ms MacNeill produced written submissions. There was nothing between them in relation to the issues for the Inquiry. They were both agreed as to its purpose and scope and therefore I propose to repeat here, in outline, what was in effect a joint position.

[24] Parties were agreed that in terms of section 6 (1) (c) when the Inquiry was considering what reasonable precautions, if any, there may have been whereby the death and any accident resulting in the death might have been avoided the test was whether there was a “real or lively possibility” of a reasonable precaution so doing.

[25] While it was the Crown's position that there was evidence of possible precautions – by way of lighting, high visibility clothing or a flashing light on the tractor – in the particular circumstances of this accident these were neither reasonable nor likely to have prevented the accident occurring. Neither Mr Robertson nor Ms MacNeill sought any determination under section 6 (1) (c).

[26] They were agreed that in terms of section 6 (1) (d) the Inquiry was to consider whether there were any defects in any system of working that contributed to the death or the accident resulting in the death. In so doing the Inquiry has first to ask if there was a defect. Both Mr Robertson and Ms MacNeill submitted that there was no defect and therefore no determination should be made under section 6 (1) (d).

[27] Turning to section 6 (1) (e) it was agreed that any determination should be made where, *inter alia*, there was a public interest in the issues raised in the Inquiry.

[28] For the Crown Mr Robertson highlighted issues in relation to mechanical defects in the tractor, specifically that it was not suitable for use on the public road. However he

agreed that the evidence was clear that it was never so used. He also drew attention to the evidence that Mr Reid's state of health had changed over the weeks prior to the accident and that he had had falls which might account for his having fallen (if he had) in the cattle shed.

[29] It was Mr Robertson's position however that as the mechanical defects did not contribute to the accident and as it could not be known whether Mr Reid had fallen immediately prior to the accident that no determination should be made. Indeed he urged me to make a finding that no one in any way contributed to the accident that resulted in Mr Reid's death. It was, he said, a tragic accident and one for which Brian Reid was in no way responsible.

[30] Ms MacNeill agreed.

DISCUSSION

[31] Based on the evidence before me at the Inquiry I was satisfied that I should make the determinations set out above.

[32] The evidence in relation to the time, place and cause of death were uncontroversial. Nor, for that matter, was there any controversy about the circumstances of the accident itself save for the fact that none of the witnesses were able to assist me in understanding how Mr Reid came to be in the cattle shed at a time when, it was all agreed, he should not have been there and knew he should not have been there.

[33] That he had been unwell and falling in the weeks leading up to the accident suggests that he might have become confused entered the shed and then slipped. Alternatively he might have been trying to get the work over quickly (it was cold) and went into the shed before he should.

[34] However as there was no evidence about why he was there I must decline to make any findings as these would be speculative at best. I regret I am unable to give Mr Reid's family an answer to this point which I am sure has troubled them since the day of the accident but the evidence is simply not available and we will never know why he was there.

[35] In relation to the other areas of possible determination, I agree with the submissions on each of the subsections, and for the reasons advanced.

[36] This was a tragic accident. There were no reasonable precautions which might have been taken for which there was a lively possibility the accident and the death might have been avoided. All reasonable precautions had been taken. There was no defect in the system of work that might have prevented the accident.

[37] Given the structure of the legislation I cannot make a formal determination to this effect but I am satisfied on the evidence that there was nothing that Brian Reid did that caused or contributed in any way to the accident or to the death of his father. He was in no way responsible for that accident and I hope that will give him and his family some comfort.

[38] For these reason I am not persuaded that I should make any findings in the wider public interest.

[39] Finally I would like to extend my condolences for her loss to Mrs Reid, who, understandably, did not wish to attend the Inquiry, and again to Brian Reid, who did, as well as to Mr Reid's wider family and friends. I have no doubt but that Mr Reid will be missed by them all. I am only sorry that the Inquiry cannot provide them with an explanation as to the reason for his death.

Sheriff Susan A Craig
Livingston
7 February 2014