

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT WICK
DETERMINATION

by

SHERIFF ANDREW BERRY, Esquire,
Sheriff of Grampian, Highland and Islands at Wick

in an Inquiry into the circumstances of the death of

ALEXANDER DAVID BANKS
(08.09.1946), late of Calder Road, Halkirk, Caithness
under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

For the Crown, David Barclay, Procurator Fiscal.

Wick, 8th October 2012.

My determination is:-

- (1) Following upon an accident in the daylight hours of 13th June 2011, and before 15.00, at Sour Farm near Halkirk Alexander David Banks, Farmer, born 8th September 1946 and late of Calder Road, Halkirk, Caithness died.
- (2) The cause of death was due to multiple injuries caused when said Alexander David Banks was dragged by a stampeding cow to which he was attached by a rope while assisting the cow with it's new born calf.

Sheriff Andrew Berry.

NOTE.

This Fatal Accident Inquiry took place before me at the Sheriff Court in Wick on Thursday 23rd August 2012. No party was formally present or represented at the Inquiry.

On 13th June 2011 Alexander David Banks, and known as "Sandy", was working alone on his farm, known as Sour Farm. Mr Banks was a highly experienced and

diligent farmer and a man of reliability and routine. During the day his wife, Mrs Elizabeth (“Ella”) Banks, having noted that Mr Banks had not come home for lunch, looked for him and saw him apparently lying in a field some distance away. Mrs Banks contacted a friend and neighbouring farmer, John Buchanan, who attended at Sour Farm and having been directed by Mrs Banks, entered the field and found Sandy Banks lying dead. A cow stood nearby and a rope was tethered around it’s head. The rope was also attached to Mr Bank’s waist. Mr Buchanan cut the rope and contacted the emergency services. Paramedics and Police officers were soon in attendance with one of the former confirming Mr Banks was dead.

The cow had a newborn calf nearby and it would seem that in caring for his cattle Mr Banks had attached himself to the cow to allow him to assist the calf in suckling it’s mother while keeping his hands free. There were no eye witnesses to what had happened but it is also clear that the cow, for whatever reason, had dragged Mr Banks causing multiple injuries leading to his death.

I heard evidence from:-

- a) Detective Constable Kevin Byrne of Northern Constabulary who stated that on 13th June 2011 around 15.40 he received a call to attend at Sour Farm, Halkirk, arriving there at about 16.10. The officer saw the deceased in a field having clearly suffered multiple injuries and also saw items of clothing at various locations within the field consistent with Mr Banks having been dragged. Additionally the officer spoke to seeing lengths of rope on the ground. His primary purpose in being there was to make a DVD of the locus and take still images therefrom, which he identified. The officer also gave a commentary about the locus as the DVD was viewed. Further, it was for the officer to assess the situation and consider if anything untoward had occurred. He concluded that the situation he viewed was consistent with Mr Banks having been dragged by a cow to which he had been tied with a rope for the purpose of assisting the cow with a new born calf. He considered that what had occurred had been a very unfortunate accident. He reported the matter to The Health and Safety Executive the next day.
- b) John Webster was one of two paramedics who attended at the locus on 13th June 2011 arriving there at around 15.30. Upon arrival he saw a lady (Mrs Banks) who was very distressed along with a male person (Mr Buchanan). His colleague stayed with the lady while the male directed him to the part of the field where Alexander Banks lay. Mr Webster was unable to find any sign of life and noted that the deceased had clearly suffered multiple injuries consistent with him having been dragged and trampled by a cow as had been reported to him. The witness felt that Mr Banks must have been dead for some hours when he attended to him.
- c) John David Buchanan is a farmer of 20 years standing who had known Alexander Banks for around 8 years as a friend and neighbour. Mr Buchanan worked with Mr Banks from time to time and considered him a safe person to

work with and whose abilities were very good. Mr Buchanan confirmed that it was not unusual for a farmer to work alone with cattle. Additionally he had worked with Mr Banks, and also his wife, on a regular basis. He found Mr Banks to be a man of regular working habits and practices and a consistent worker who was very good and relaxed around his animals.

On 13th June 2011 Mr Buchanan received a telephone call from Mr Banks' wife Ella around 15.00. She was very upset and asked him to come straight away to Sour Farm as something had happened to her husband. On arrival at the farm 2 or 3 minutes later Mrs Banks directed Mr Buchanan to a field where, having driven in, he saw Mr Banks and a cow. He further saw a rope, like a lasso, attached to the cow with the other end attached to Mr Banks' waist. On checking Mr Banks he found that he was badly bruised and he could not detect a pulse.

Mr Buchanan thought that Mr Banks' body showed signs of having been dragged by the cow which seemed to be "knackered".

He cut the rope and immediately dialled 999 for the emergency services. Within a few minutes an ambulance arrived followed by the Police.

When asked by the Procurator Fiscal what, in his experience, he thought had happened Mr Buchanan stated that it appeared that Mr Banks had been trying to get a new calf to suckle its mother and that to assist he had put the rope around his waist to hold the cow and to let him put the calf underneath. In his view this was a common practice which a person would do, not thinking what might happen. For himself Mr Buchanan thought that he might tie the cow to a gate or similar, perhaps in a shed, to get the cow to stand at ease. He observed that in considering risk an individual working with his animals over years would know them and whether each was quiet or not and would use this knowledge in a judgement process. If the cow were in the middle of a field with no wall or fence to attach it to there were available portable pens to run them into. Mr Banks had such a pen in the field. Such were made up of gates and he estimated the cost thereof at £400-£500.

- d) PC Mark Hilliard of Northern Constabulary stated that on 13th June 2011 he responded to a call to attend the locus in respect of an accident which had occurred arriving there at about 15.15 along with a colleague. There he saw Mr Bank's wife. He also saw John Buchanan coming out of a field with an ambulance technician. The officer was directed to where Mr Banks lay in the field and along with Mr Buchanan recovered items of clothing from around the field. Later the officer took a very brief statement from Mrs Banks. On a later date he returned to the locus with Ann Poyner of The Health and Safety Executive. PC Hilliard stated that as the first officers on the scene he and his colleague found nothing to cause them any concern as to what had occurred.
- e) Ann Poyner, an Inspector with the Health and Safety Executive of 30 years experience and with an added insight into farming accidents, stated that the

Executive became involved as the accident had occurred in a course of employment. Ms Poyner attended Sour Farm on 15th June 2011. Part of her function was to consider whether a safe method of working had been adopted and to ensure that health and safety law had been complied with in relation to duties to employees and third parties. She had had the benefit of considering police statements relative to the case and information obtained from John Buchanan.

Ms Poyner ascertained that Mr Banks had been a sole trader and therefore the responsibility for risk assessment and work practices would have rested with him.

She observed that from the papers and witness statements she had seen that Mr Banks' cattle were calving and that he had gone every morning to see them and to carry out tests to prevent infection and generally to see if they were suckling. Additionally there was a requirement to tag all calves but while this did not need to be done straight away it was easier when they were not in a position to run away.

It was clear to Ms Poyner that there had been no eye witnesses to what had occurred but that Mr Banks had attached a halter to a cow and to himself with a view to restraining the cow to let him handle the calf. The use of a halter in this way might be common if the cow was used to humans and it would make handling of the cow easier and the use, as such, was not a problem in the right place and at the right time.

Ms Poyner further stated that while it was recommended that two persons be present when dealing with a cow which might be unpredictable, in the real world this did not always happen and there are no rules to state that a person should not work alone. Her view was that Mr Banks had worked with cows all his life and her experience at Sour Farm was that the cattle had been well handled with the cows looking at those present and continuing to graze. Additionally she stated that a farmer's risk assessment was a dynamic process as he would go along.

The Inspector noted that there was a pen in the field which could be used to confine an animal. This showed good working practice. Further, having examined the pieces of rope cut by Mr Buchanan it showed that it had been tied with a quick release knot which again showed that Mr Banks had exhibited further good working practice and that he did things in a responsible manner although to attach the halter to one's self would not be regarded as a safe method of work in normal circumstances in view of the power of a cow. She did not think that Mr Banks would have done as he did this day as a usual practice but perhaps acted on the spur of the moment to enable him to work with his hands free. It was clear to her that there was no evidence of a problem with this particular cow and Mr Banks clearly knew how to put a halter on the cow with a quick release knot. Further, Mr Buchanan's input satisfied her that with a difficult calving cow it would have been taken to a shed which contained proper equipment to let matters proceed, once again showing the presence of proper equipment and good working practice.

In conclusion, Ms Poyner stated that while it might be better to have two persons in attendance, as opposed to one, Mr Banks had equipment available to help him and, significantly, Sour Farm had never required a visit from The Health and Safety Executive. She could not remember any incident or concern at the farm, agreeing with Mr Barclay that there was "not even a whisper" of concern about Mr Banks and/or Sour Farm.

After the leading of the witnesses the Procurator Fiscal read out an affidavit by Dr Mark Ashton, Consultant Pathologist admitting into evidence his post-mortem report which covered the history of the deceased, the accident, his views (post mortem) and his summary and conclusion that Mr Banks a "64 year old farmer was reportedly tied to a cow which bolted dragging him around the field at his farm. He was declared dead at the scene. Post-mortem examination has shown multiple injuries to the head, chest and lumbar spine. The appearances are in keeping with him being dragged along the ground and possibly impacting with obstacles such as a fence post or stone wall. There was no evidence of any significant natural disease".

In his submissions Mr Barclay asked me, based on the evidence, to reach the views which I have in my determination, in relation to where and when Mr Banks died and the cause thereof in terms of section 6 (1)(a) and (b) of the Act.

In relation to section 6(1) (c), (d) and (e) he submitted:-

(c) it would have been reasonable for Mr Banks to make use of the portable pen within the field at least to the extent of attaching the cow to it as opposed to himself;

(d) it is difficult to say if what occurred involved was a defect in a working system or a tragic accident, and

(e) as a general observation the cost of a portable pen of around £400-£500 is not disproportionate.

I consider all the evidence led to have been given accurately and honestly. There is a minor discrepancy between the evidence of Mr Webster and PC Hilliard, as I have it noted, in that the former stated that he arrived at Sour Farm around 15.30 and the former stating that he arrived at around 15.15. I am satisfied however that Mr Webster arrived before the Police. This is of no consequence.

Turning to Section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 I have concluded the following in relation to the appropriate sub-sections thereof:-

- (a) Following upon an accident in the daylight hours of 13th June 2011, and before 15.00, at Sour Farm near Halkirk Alexander David Banks, Farmer, born 8th September 1946 and late of Calder Road, Halkirk, Caithness died.
- (b) The cause of death was due to multiple injuries caused when said Alexander David Banks was dragged by a stampeding cow to which he was attached by a rope while assisting the cow with it's new born calf.
- (c),(d) and (e) I make no finding.

It is clear that on 13th June 2011 Sandy Banks was attending to the welfare of his stock and in doing so attempted to assist a calf suckle from it's mother. In this he used a piece of rope to make a halter or lasso which he placed around the head of the cow. Additionally he tied the other end of the rope to his waist. This would have had the effect of keeping the cow still while allowing him the free use of both hand to place the calf below it's mother to suckle. The rope had a quick release knot. Thereafter, and for a reason not known, the cow dragged Mr Banks, possibly for some distance and time, causing multiple injuries and resultant death.

Sandy Banks was a highly experienced, hard working and diligent farmer whose working practices had never given concern. In caring for his animals he required to assist a cow with it's newborn calf and did so in the best way he considered appropriate standing his long experience. He had available buildings and equipment which meant that he was able to carry out his work in a variety of different ways judged best by him standing his skills. He knew his own stock. While the method chosen to assist the cow and calf on this day has had tragic consequences it cannot be said that he ought to have acted in a different way. What occurred was a sad and tragic accident.

I was greatly assisted by the measured presentation of the case by Mr Barclay. I add that PC Hilliard commented that he had been made aware by Mr Banks' family that the sensitive handling of the matter by the Procurator Fiscal and those who support him was greatly appreciated.

I would like to express my personal condolences to the family and friends of Alexander "Sandy" Banks.