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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

CROWN SIDE

IN THE MATTER OF AN APPLICATION BY CHRISTINE FORDE FOR JUDICIAL REVIEW

GILLEN J

Introduction

[1] The applicant in this case is the mother of Clifford Michael Forde (date of birth 5 December 1984 and hereinafter described as the "deceased") who died on 13 July 2006 as a result of a fall from a balcony of his room on the fourth floor of a hotel in which he was staying in Ibiza, Spain. The applicant does not accept the findings of an investigation carried out in Spain that concluded her son committed suicide. The deceased's body was returned to Northern Ireland and shortly thereafter cremated. The applicant has requested that the coroner for Northern Ireland, Mr John Leckey, hold an inquest into his death but that request has been declined on the basis that there is no jurisdiction to hold such a request. The subject of this Judicial Review is a decision by the Attorney General on 19 September 2007 not to instruct the senior Coroner for Northern Ireland to hold an inquest into the death of the deceased. The applicant seeks an order of certiorari to quash that decision and in addition a declaration that the Attorney General is empowered by Section 14 of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") to direct any coroner in Northern Ireland to conduct an inquest into the death of any citizen of Northern Ireland whose death has occurred abroad and whose body has been returned to Northern Ireland. In essence the applicant seeks a definitive construction by the court of Section 14 of the 1959 Act and, although it is not strictly part of the judicial review proceedings, of Section 13 of the same Act. Mr O'Donoghue QC, who appeared on behalf of the applicant with Mr O'Connor, submitted that although the relief sought did not expressly request any relief in relation to Section 13, the court was obliged to consider its meaning in order to construe Section 14 of the Act.

Statutory framework

[2] The following are the relevant extracts from the 1959 Act which have been referred to during this case or are mentioned in this judgment:

> "2.-(1) The Lord Chancellor may appoint one, or more than one, coroner and deputy coroner for such district or districts and on such condition as to numbers, . . . as the Lord Chancellor . . . may determine
>
> . . . .
>
> 6.-(1) Subject to the provisions of sub-section (2) and or section 14 a coroner shall hold inquests only within the district for which he is, or is deemed to have been become appointed under this Act.
>
> . . . .
>
> 7. Every medical practitioner, registrar of deaths or funeral undertaker and every occupier of a house or mobile dwelling and every person in charge of any institution or premises in which a deceased person was residing, who has reason to believe that the deceased person died, either directly or indirectly, as a result of violence or misadventure or any unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease . . . shall immediately notify the coroner within whose district the body of such deceased person is of the facts and circumstances relating to the death.
>
> 8. Whenever a dead body is found, or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs, the district inspector within whose district the body is found, or the death occurs, shall give or cause to be given immediate notice in writing thereof to the coroner within whose district the body is found or the death occurs, together with such information also in writing as he is able to obtain concerning the finding of the body or concerning the death.

9. Where there is reason to believe that a deceased person died in any of the circumstances mentioned in section 7, the body of the deceased person shall not be cremated or buried and no chemical shall be applied to it externally or internally and no alteration of any kind shall be made until the coroner so authorises.

. . . . . .

11.-(1) Where a coroner is informed that there is within his district the body of a deceased person and there is reason to believe that the deceased person died in any of the circumstances mentioned in section 7 or section 8 he shall instruct a constable to take possession of the body and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary.

. . . . . .

13.-(1) Subject to sub-section (2) a coroner within whose district –

(a) a dead body is found; or
(b) an unexpected or unexplained death or a death in suspicious circumstances or in any of the circumstances mentioned in section 7, occurred;

may hold an inquest either with a jury or, except in the cases in which a jury is required by sub-section (1) of section 18, without a jury.

. . .

14. Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in which the death occurred, he were such coroner) whether or not he or any other coroner has viewed

the body, made any enquiry or investigation, held any inquest or done any other act in connection with the death."

Statutory framework in England and Wales

[3] During the hearing of this matter, reference was made to the corresponding legislation in England and Wales namely the Coroners Act 1988 ("the 1988 Act"). I shall set out the relevant sections as follows :

> "8.-(1) Where a coroner is informed that the body of a person ("the deceased") is lying within his district and there is reasonable cause to suspect that the deceased –
>
> (a) has died a violent or an unnatural death;
>
> (b) has died a sudden death of which the cause is unknown; or
>
> (c) has died in prison or in such a place or in such circumstances to require an inquest under any other Act,
>
> then, whether the cause of death arose within his district or not, the coroner shall as soon as practicable hold an inquest into the death of the deceased either with or, subject to sub-section (3) below without a jury.
>
> . . . . . .
>
> 13.-(1) This section applies where, on an application by or under the authority of the Attorney General, the High Court is satisfied as respects a coroner ("the coroner concerned") either –
>
> (a) that he refuses or neglects to hold an inquest which ought to be held; or
>
> (b) where an inquest has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of enquiry, the discovery of new facts or evidence or otherwise) it is necessary

or desirable in the interests of justice that another inquest should be held.

(2) The High Court may –

(a) order an inquest or, as the case may be, another inquest to be held into the death either –

(i) by the coroner concerned; or
(ii) by the coroner for another district in the same administrative area;

(b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and

(c) where an inquest has been held, quash the inquisition on that inquest.

(3) In relation to an inquest held under sub-section (2)(a)(ii) above, the coroner by whom it is held shall be treated for the purposes of this Act as if he were the coroner for the district of the coroner concerned."

History of the Northern Ireland legislation

[4] Mr O'Donoghue QC, who appeared on behalf of the applicant with Mr O'Connor, outlined a helpful history of the statutory development of the jurisdiction of the coroner in Ireland. In addition the early origins of the office of coroner in Ireland is helpfully traced in "Coroners' Law and Practice in Northern Ireland" by John Leckey and Desmond Greer, an SLS legal publication at page 1 et seq (hereinafter referred to as "Leckey and Greer")

[5] The office of coroner in Ireland, as in England, has its origin in common law. The office was duly regularised in statutory form. In Ireland the principal substantive legislative origins lie in the Coroners (Ireland) Act 1846 (9&10 Vict. cap 37) ("the 1846 Act") which remained the primary legislation in Northern Ireland until the 1959 legislation was enacted by the Parliament at Stormont . The 1846 Act was described as an Act of Parliament amending the laws relating to the office of coroner and the expenses of inquests in Ireland in contrast to the Coroners Act 1887 ("the 1887 Act") in England and Wales which purported to amend and consolidate the law relating to coroners in England. This has now been superseded by the Coroners Act 1988("the 1988 Act").

[6] Section 22 of 1846 Act provides:

> "That when any dead body shall be found or any case of sudden death, or of death attended with suspicious circumstances, shall occur in any District, the sub inspector of the constabulary of such District or the constable or sub constables acting in and for the place for such dead bodies shall be found or such death happened, shall give or cause to be given immediate notice thereof to the coroner of such District, together with such information as he or they shall have been able to obtain touching the finding of such dead body or such death; and the said coroner shall, if upon the receipt of such or other sufficient notice and information he shall deem it necessary to hold an inquest upon such dead body (*take the requisite steps to hold the inquest).*"

[7] I pause to observe at this point that it is not clear why Parliament decided to amend the jurisdiction of coroners in Ireland in 1846. Mr O'Donoghue speculated that it must have been related to the Great Famine occurring in Ireland at that time between 1845 and 1849 and in order to enhance the powers of the coroner to identify the dead who may well have died or been found dead in districts alien to them when they travelled the country during that unhappy period of Irish history. Hence he argued it cannot have been an attempt to narrow the remit of the coroner's authority.

[8] Mr O'Donoghue drew my attention to the fact that as with the scheme under the 1959 Act, the scheme of the 1846 Act was to create an administrative system within Ireland for the discharge of the function of the coroner with Ireland being divided into districts and a coroner being appointed for each relevant district. Section 22 imposed an obligation on the part on the sub inspector of the Constabulary for the relevant district to give notice to the District Coroner when either of two events occurred:

(a) when any dead body was <u>found</u> in the district; or

(b) when any sudden death or death attended with suspicious circumstances <u>occurred</u> in the district.

Thereafter if the coroner deemed it necessary to hold an inquest upon such dead body he would convene an inquest.

[9] Thus, given that the 1846 Act was an amending Act, with no legislative precursor, Mr O'Donoghue argued that Parliament had decided in 1846 that in Ireland the wording conferring jurisdiction upon the District Coroner was to be different from that imposed upon the District Coroner in England. As will appear later in this judgment, Mr O'Donoghue relied upon this deliberate

decision to change the course of inquests in Ireland from that which had previously obtained and which continued to exist in England and Wales to ground his later submissions.

The statutory development of the jurisdiction of coroner in England & Wales

[10] Clearly therefore the jurisdiction of the District Coroner in England and Wales was different from that in Ireland from the time of the 1846 Act. The modern legislative origin of the jurisdiction of the English coroner lies in the 1887 Act. Section 3(1) of the 1887 Act provides as follows:

> "Where a coroner is informed that the dead body of a person is lying within his jurisdiction and there is reasonable cause to suspect that such person has died a sudden death of which the cause is unknown or that such person has died in prison or is in such place or under such circumstances as to require an inquest in pursuance of any act the coroner, whether the cause of death arose within his jurisdiction or not, shall as soon as practicable, issue his warrant for summoning," etc.

[11] It was Mr O'Donoghue's submission that since there was no legislation altering the jurisdiction of the coroner in England and Wales prior to the 1887 Act, and the 1887 Act was a consolidating Act, the court should be satisfied that the jurisdiction of the coroner as set out in 1887 Act represented the jurisdiction of the coroner in England and Ireland prior to the 1846 Act until the jurisdiction of the coroner in Ireland was amended by the 1846 Act.

The Smith case

[12] The leading authority on Section 3(1) of the 1887 Act (which is substantially the same as section 8(10) of the 1988 Act) is *R v. West Yorkshire Coroner ex parte Smith* (1983) QB 335 ("Smith's case"). In that case a British subject, who had suffered a violent death abroad, had been brought back to England and was lying within the geographical area of the coroner. Initially a Divisional Court had upheld the coroner's refusal to hold an inquest on the basis that he did not have jurisdiction but the Court of Appeal reversed that by a two to one majority. Donaldson LJ said that Parliament could have added a rider that if the death occurred abroad other than on the high seas, the coroner need not or even should not enquire into the cause of death. The court considered that the words of this section were clearly and wholly free from ambiguity. The judge said at page 358f :

> "Once it is appreciated that it is the dead body lying within the jurisdiction which gives rise to the need for

> inquiry and which is the subject of the inquiry, the section is free from any possible objection that it creates what the Americans call a "long arm jurisdiction".

[13] At page 357h Donaldson LJ added:

> "The presence of a dead body in this country is a factor of significance. It creates a very real and legitimate public interest in holding an inquiry, and this interest is no way extra-territorial. In the absence of a death certificate by an appropriate authority in this country, it may well be considered essential at the very least to ascertain where the body came from, whether the deceased died in this country and, if so, how. The public interest centres upon the body which is in this country, upon the cause of death of that body and only incidentally upon where that cause or the death itself occurred."

[14] Significantly however the Smith case was dealing with wording different to that in the 1959 Northern Ireland legislation and had no need to construe the meaning of the word "found". Therefore this court must be cautious about invoking the assistance of that authority.

Textbook assistance

[15] It is always helpful to consider what textbook writers have said about a particular section of an Act of Parliament. Leckey and Greer construe Section 13(1) of the 1959 Act and the definition of the word "found" at paragraph 4-31. The authors conclude that "where a person dies abroad and the body is returned to an airport or port in Northern Ireland ,it does not appear possible to hold that body has been "found " at that airport or port albeit they go on to indicate that the matter may not be beyond doubt .

[16] Addressing section 14 of the 1959 Act the authors state as p 296, footnote 25:

> "It would appear that the power conferred by s14 may only be exercised in a case where the death occurred in Northern Ireland."

[17] The footnote draws on correspondence between the office of the HM Coroner for Greater Belfast and the Attorney General's office to support this proposition. The authors rely upon the Hansard debates of the Northern

Ireland Parliament at the time of the 1959 Act to suggest that Section 14 was intended to apply in three particular circumstances –

- Where the coroner with jurisdiction in respect of a death had decided not to hold any inquest into that death.
- Where the coroner had held an inquest which was only "part of an inquest" or "perfunctory".
- Where, having reached a "proper" decision on the evidence, and a reasonable time having elapsed, further evidence relating to the death comes to the attention of the Attorney General.

I observe that these three illustrations would seem to broadly emanate from similar wording in section 6 of the Coroners Act 1887(now Section 13 of the Coroners Act 1988).

[18] Interestingly Mr O'Donoghue noted an extract from the 4th edition of "The Legal System in Northern Ireland" by Professor Brice Dickson at paragraph 6.3 which supports his contention that the legislation in N. Ireland permits a coroner to hold an inquest into a death occurring abroad. However in the 5th edition of the book at page 37 that view is reversed, the author recording:

> "In England and Wales and the Republic of Ireland an inquest can be held even though the death occurred abroad ,provided that the body has since been returned to the coroner's district ,but inexplicably the law does not permit such an inquest to be held in Northern Ireland."

The applicant's case

[19] Mr O'Donoghue submitted that a plain literal reading of Section 13(1) of the 1959 Act gave the coroner the jurisdiction to hold an inquest into the death of a body present in his district even though the death or cause of death may have occurred abroad.

[20] Any ambiguity, he contended, as to the meaning is dispelled by the historical context. Counsel submitted that the 1846 legislation must be seen in the context of the Irish Famine. It deliberately amended and widened the existing legislation (which applied to both England and Ireland) in order to permit coroners to hold inquests on bodies which had originated far from the district of the coroner. That was reflected in the 1959 Act. In contrast, no

change was made to the English legislation until 1887 when a Consolidation Act permitted the coroner to have powers to hold inquests into deaths occurring abroad (see Smith's case). Since this was a Consolidation Act, such a power clearly vested in the coroner at least prior to the 1846 Act. He argued therefore that it would be incongruous to hold that the 1846 Act somehow restricted the pre-existing position in circumstances where the contrary was to be assumed in its social context.

[21] Counsel advanced the argument that on a plain reading of Section 14 of the 1959 Act, the Attorney General had a clear power to direct a coroner in Northern Ireland to bring an inquest having considered the circumstances of the death irrespective of where the death occurred. It was not merely a supervisory jurisdiction given to the Attorney General. There were no words of limitation confining its effect to any territorial location.

[22] Finally Mr O'Donoghue invoked Section 3 of the Human Rights Act 1998 ("the 1998 Act") and Article 2 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention"). His argument was that although the extent of the State's obligation to investigate the circumstances of a death under Article 2(1) of the Convention would only arise in circumstances where the State was implicated in the taking of that person's life, which was clearly not this instance, nonetheless cases will arise in which the need to conduct an Article 2 investigation will be triggered e.g. a Northern Irish soldier killed in Iraq and brought back to N. Ireland. In those instances, counsel submitted, the State will be obliged to make provision for a coroner in Northern Ireland to conduct all necessary Article 2 investigations. It was his case that having regard to the provisions of Article 2(1) of the Convention and Section 3 of the 1998 Act, Sections 13(1) and 14 of the 1959 Act must now be read in such way as to permit the holding of inquests in Northern Ireland into deaths occurring abroad so as to ensure consistency of approach.

The Respondent's case

[23] Mr McCloskey QC, who appeared on behalf of the Respondent with Mr McMillen, drew attention to the coroner's discretion to hold an inquest under Section 13 of the 1959 Act in two situations.

[24] First, where a dead body is found within his district and secondly where an unexpected or unexplained or a death in suspicious circumstances occurs within the district of the coroner. Acknowledging that if a body is "found" within the district, it matters not where the death occurred. Counsel argued that the ordinary and natural meaning of the word "found" in Section 13 suggests the discovery of a body. That was inapt to cover circumstances of this case in which a person dies abroad and is repatriated to be met at an airport in Northern Ireland by an undertaker and family members.

[25] Counsel contended that while Section 14 of the 1959 Act empowers the Attorney General to direct a coroner to hold an inquest where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable, that presupposes that the Attorney General will only act in circumstances where there is a death which could otherwise lawfully be the subject of an inquest in Northern Ireland. He contended that it was most unlikely that Parliament intended that under Section 14 the Attorney General would be empowered to direct a Northern Ireland coroner to conduct an inquest in circumstances other than those in which a Northern Ireland coroner would have jurisdiction to conduct an inquest in any event. To this end he emphasised the territorial nature of the language of Section 14.

[26] Drawing attention to the position in England and Wales, Mr McCloskey asserted the Attorney General there has no power to even direct a coroner to hold an inquest. Under Section 13 of the 1988 Act, the Attorney General can only apply to the High Court to take such steps. Counsel argued that it was never intended that in either instance there should be a power to order that there be an inquest where the triggering criteria imposed on the coroner were not met. It was most unlikely that such a wide power would be given in one part of the United Kingdom to the Attorney General in contrast to such a restricted power in another.

[27] Counsel asserted that Parliament had had a number of opportunities since 1846 to rationalise the difference between the exercise of the coroner's jurisdiction in Ireland/Northern Ireland and in England and Wales. It was a matter of legislative choice that differences had been permitted to remain and hence Smith's case, which applied to the English legislation, did not apply to the Northern Ireland legislation.

[28] Mr McCloskey advanced the argument that Article 2 of the Convention could not be invoked in this instance because the provisions of the Human Rights Act 1998 do not extend territorially to a death which occurred in a foreign jurisdiction in circumstances which were known. In short no United Kingdom public authority had any investigative obligation under Article 2 of the Convention in relation to this death. Hence there was no protected Convention right available to invoke the Human Rights Act 1998. Counsel argued that in these circumstances it would be wrong for the court to engage in a purely hypothetical exercise which clearly lay outside the bounds of the present litigation.

Conclusions

[29] Article 13 of the 1959 Act

The process of determining the intention of the legislature when construing Acts of Parliament is not a simple one. The complexity of the task has been summarised by Lord Nicholls of Birkenhead in R v Secretary of State for the Environment, Transport and the Regions ex parte Spath Holme Limited (2001) 2 AC 349 at 395 where he said:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the Minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

Lord Nicholls dilated on the meaning of the concept in a lecture to the Chancery Bar Association Annual Lecture on 16 March 2005 when he said:

> "The words of a statute are intended by Parliament to convey the meaning they would reasonably convey to a reader of the statute assisted where necessary by a suitable professional advisor."

[30] Whilst Mr O'Donoghue presented an interesting speculation as to the cause of the terminology in the 1846 Act, connected to the Irish famine, I find myself respectfully in agreement with what Lord Nicholls said to the effect that it is not the subjective intention of the Minister or other persons who promoted the legislation which I must consider but rather the objective concept of what the reader of the statute assisted by a suitable professional would take it to mean. There may be various theories as to why the wording of the 1846 legislation and Section 13 of the 1959 Act were constructed as they

are. Leckey and Greer at paragraph 1-12 opine that the purpose of the 1846 legislation was to meet the increasing awareness of the importance of collecting and recording accurate statistics on mortality and the development of a Police Service which provided the background to the enactment. No specific theory is advanced as to why the choice of the word "found" was enacted in Sections 8 and 13. I consider courts must be wary of allowing speculative theories to influence statutory interpretation.

[31] Following these principles, I have considered what the plain meaning of the word "found" amounts to in Section 13 of the 1959 Act in order to make an informed interpretation of its meaning. I have contrasted this with the use of the word "lying" in the 1988 legislation.

[32] Whilst courts should be cautious about invoking literal dictionary meanings in a statutory context, an informed starting point is the Oxford Shorter English Dictionary. "Find" is defined as "to discover or get possession of by chance or effort; to become aware of". I am satisfied that this measure of discovery or chance invests Section 13 with a quite different meaning from the simple notion of being situated which is implied in the notion of "lying" contained in Section 8(1) of the 1988 legislation. Consequently I do not consider that the criterion of Section 13 of the 1959 Act is met in circumstances where a body is returned to Northern Ireland in a planned and structured fashion subsequent to a death occurring abroad. There is no element of discovery or chance in this arrangement so far as the coroner is concerned. I consider that in construing the 1959 Act the interpreter must therefore approach it on the basis of the plain meaning rule which the normal speaker of the English language would understand it to bear in the context at the time when it was used. I find unpersuasive the proposition that a body which is returned to the United Kingdom in a planned manner to an airport and returned thereafter to the family could come within the plain meaning of a body which has been "found" in Northern Ireland.

[33] Greater caution still must be exercised by courts when interpreting the same words in different contexts. Nonetheless, two authorities serve to underline the conclusions at which I have arrived. First, in Abbott v Pulbrook (1947) SASR 57 the Supreme Court in South Africa considered the meaning of the word "found" in s. 86(1)(n) of the Police Act 1936-1938.This section made it a criminal offence for a person to be "found in or upon any dwelling" for an unlawful purpose or without lawful excuse. In dealing with the meaning of the word "found" Mayo J said at page 62:

> "The word 'found' is used elsewhere in the Act, … 'Found in or upon' the premises 'without lawful excuse' may be contrasted with 'is in, on, or near' certain places …. The dictionary meaning of 'to find'

> that seems to be appropriate is 'to meet with, or light upon, accidentally, to gain the first sight of or knowledge of, as of something new or unknown, hence to fall in with, as a person. In its ordinary sense, … 'found' implies something more than merely 'seen', proof of presence. That comparison (*with the wording placitum)* suggests there is intended to be something in 'found' that is of the essence of the offence. The word can convey the sense of discovering, the exposing or unmasking of someone in a situation that has elements of secrecy or hiding, or of dissimulation by the alleged offender to conceal or screen presence, identity, conduct, purpose or other circumstance. Or, possibly, the words suggest some aspect of surprise or of the unexpected."

This case carries a resonance with my conclusion that the word "found" in Section 13 of the 1959 Act does connote some element of discovery, surprise or chance more than mere presence.

[34] Smith's case is authority for the proposition in England and Wales that if there is a body lying within the coroner's district and there is reasonable cause to suspect that the deceased died a violent or unnatural or sudden death of which the cause is unknown, the coroner must hold an inquest even where the deceased died abroad and his or her body has been brought home to England for burial. However as I have indicated at paragraph 14 of this judgment, Donaldson LJ predicated his comments and conclusions on the "presence" of a dead body in this country. I do not consider that use of the word "found" connotes mere presence and hence I am not persuaded that Smith is an appropriate analogue for Section 13 of the 1959 Act.

[35] It is to be presumed that the draftsman of Parliamentary legislation in each of the Acts under scrutiny has not indulged in elegant variations but keeps to a particular term in wishing to convey a specific meaning. Accordingly a variation in terminology used is taken to denote a different meaning. Blackburn J said in Hadley v Perks (1866) LR 1 QB 444 at 457:

> "It has been a general rule for drawing legal documents from the earliest times, one which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning …"

[36] The 1846 Act, the predecessor of the 1959 Act, was an amending Act. The 1887 Act, the predecessor of the 1988 Act, was essentially consolidating legislation. It seems to me therefore that the change in the amended

legislation was deliberate and for some purpose. The word "found" has been deliberately introduced. Equally, in the 1887 Act, the draftsman has deliberately chosen to avoid the use of the word "found" and has preferred "lying". On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment. It is to be presumed that if a word or phrase appears, it was put there for a purpose and must not be disregarded. Strength is lent to the distinction between these two words by virtue of the fact that section 32(1) of the 1959 Act specifically refers to a coroner holding an inquest "on a body lying within his district" which then is to be removed into another district. The draftsman of the 1959 legislation was therefore perfectly aware in my view of the distinction between the two concepts and intended that the word "found" in section 13 should have a different meaning to "lying" in section 32(1).

[37] It seems to me that there is a clear structure to the 1959 Act. It deliberately introduces a wide spectrum of investigation to ensure all the necessary facts are in the possession of the coroner before he moves to the narrower focus of exercising his discretion as to whether he should actually hold an inquest or not . Thus the wording of Article 7and 11 illustrates the process of investigation which leads up to the coroner having sufficient information to exercise his discretion in Section 13. Section 7 casts a duty on various people including every occupier of a house in which a deceased person was residing and who has reason to believe that the deceased person died as a result of violence etc. to notify the coroner. Section 11 casts a duty on the coroner to take possession of a body when he is informed that there "is" within his district the body of a deceased person and there is reason to believe that the deceased person died in any of the circumstances mentioned in Section 7 or 8. For the purposes of these sections therefore mere presence is enough. These however are all preludes to the coroner's decision under Section 13 and in my view constitute a logical sequence of events leading up to the exercise of that discretion in the limited circumstances set out in Section 13.

[38] I am of course mindful that recently in Jordan (AP) (Appellant) v Lord Chancellor & Another (Respondents) (Northern Ireland) and Others 2007 UKHL 14 the House of Lords has emphasised the similarities between the two legislative regimes in Northern Ireland and England and Wales with reference to coroners. At paragraph 21 Lord Bingham of Cornhill said:

> "There are obvious differences between the legislative regime applicable to inquests in Northern Ireland as compared with that in England and Wales. For example the mandatory duty laid on coroners by Section 8 of the 1988 Act may be contrasted with the duty, expressed as if discretionary, in Section 13 of the 1959 Act, although, given the effective Sections 14 and

> 18 of the 1959 Act, this difference is superficial. Similarly, the forms of verdict suggested in the 1953 and 1984 Rules are more detailed than those in the 1963 Rules or the 1988 amendment although 'findings' is not in itself a restrictive heading. Much more striking than the differences between the two legislative regimes as they have developed over time however are the similarities. In both jurisdictions recognisably similar office-holders are conducting or directing recognisably similar investigations and enquiries in recognisably similar situations for recognisably similar purposes. … But deaths so caused, for all the problems of security and evidence which any investigation may raise, are not less in need of investigation and decision than violent, unnatural or suspicious deaths or otherwise caused. It would at first blush be surprising if the difference between the two regimes, such as they are, were to lead to markedly different outcomes."

[39] Nonetheless even these comments, which must guide my conclusions, do not alter the fact that in this instance two quite different choices of language have been chosen. The legislature in each jurisdiction has had a number of opportunities to restore symmetry and to prevent divergence had it wished to do so. 1846, 1887 and 1959 and 1988 have all afforded opportunities. Presumptively the difference in wording is by legislative choice. Moreover I observe in this context that the Brodrick Report published in 1971 is generally accepted as being the most detailed and far reaching study of the coroner's system ever undertaken (see Leckey and Greer at page 18). At paragraph 13.12 the Committee considered that "future legislation should make it clear that a coroner has discretion whether or not to act in any case where he is informed that within his area is the body of a person who died outside England and Wales in circumstances which had they occurred in this country, would have given him jurisdiction to act". Parliament has therefore been well aware of the issue as recently as the publication of the Brodrick Report but has chosen not to intervene as far as the 1959 Act is concerned.

[40] For my part I consider it is of significance that Section 13(1) of the 1959 legislation is disjunctive between 13(1)(a) and 13(1)(b). If the word "found" meant mere presence i.e. "lying", it is difficult to see why it was necessary to add on 13(1)(b). If mere presence was enough, then 13(1)(b) would appear to be largely redundant. What would be the purpose in drawing the distinction between circumstances where a body is found and circumstances where a death occurs? The former would include the latter.

[41] I also consider that there is much merit in Mr McCloskey's assertion that the 1959 Act is a carefully devised structure with a predominantly jurisdictional emphasis on the role of the coroner. It is essentially concerned with deaths inside Northern Ireland with the only exception being where bodies are "found" in Northern Ireland. It is difficult therefore to interpret the spirit of this Act as being intentionally broad enough to widen the coroners power to encompass any body present in Belfast emanating from anywhere in the world or, more particularly, the planned returned of bodies from abroad in circumstances where a foreign jurisdiction has already made a determination as to the cause of death .

[42] I am not persuaded by the argument that a narrow construction of the word "found" will create unacceptable anomalies. Mr O'Donoghue drew the court's attention to two potential anomalies. First, if two persons were kidnapped from Northern Ireland to the Republic of Ireland and murdered there. An inquest in Northern Ireland could be carried out if one body was found thereafter lying in Northern Ireland but that the inquest on the other body could not be carried out if it was found lying in the Republic of Ireland and subsequently brought to Northern Ireland by the family. Secondly, if a Northern Irish soldier is killed in an Iraq, the return of his body to England would result in an inquest but if his body is taken directly from Iraq to Northern Ireland, there would be no inquest.

[43] There is no doubt that a court will seek to avoid a construction that creates an anomaly or otherwise produces an irrational or illogical result. As Lord Devlin said in Hedley Byrne and Co Ltd v Heller and Partners Ltd (1964) AC 465 at 561:

> "No system of law can be workable if it has not got logic at the root of it."

Lord Scarman addressed the issue of anomalies in Stock v Frank Jones (Tipton) Ltd (1978) 1 WLR at p. 238 as follows:

> "I wish, however, to add a few words of my own on the 'anomalies' argument. Mr York for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the 'anomalies' which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with a mischief which the Act is designed to

> combat. …. If the words used by Parliament are plain, there is no room for the anomalies test unless, the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words 'have been inadvertently used' it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated. …. But mere 'manifest' absurdity is not. It must be an error (of commission or omission) which in its context defeats the intention of the Act."

[44] Applying these tests to the words of Section 13, I am unable to find any ambiguity or obscurity in the choice of words. I do not think that the word "found" is capable of bearing more than the meaning which I have already outlined. Whilst there may be no ready explanation for the absence of a right to an inquest in N. Ireland in the circumstances adumbrated in paragraph 37 there is no necessary absurdity which would destroy the intention of Parliament in either of the consequences postulated because the families in each case can obtain an inquest if they wish by either allowing the body to remain in the Republic of Ireland in the first instance or by transferring the body directly to England from Iraq (as I understand invariably happens) in the second. I do not find the difficulties adverted to by Mr O'Donoghue to be sufficiently strong to come within the absurdity test set out by Lord Scarman and accordingly I am not persuaded that their existence should deflect me from what I consider to be the plain meaning of the legislation.

[45] Article 14 of the 1959 Act

I consider that the interpretation of Article 14 must gather its meaning from the surrounding context. It would seem to me to constitute a striking asymmetry if the carefully constrained jurisdictional confines of the coroner's powers were to be dramatically broadened at the discretion of the Attorney General. In the first place it would draw a very great distinction with markedly different outcomes between legislation in the two jurisdictions of Northern Ireland from England and Wales where, in the latter case, the Attorney General has no personal powers of direction which are reserved to the court.

[46] Mr McCloskey properly drew my attention to the Hansard debate through the Northern Ireland Parliament at the time (see SEN. DEBS (NI) Volume 43, Columns 667-668) to confirm the limited intention of Section 14. Three instances are given of when the Attorney General should intervene. First, where the coroner with jurisdiction in respect of the death has declined to hold an inquest. Secondly where the coroner has conducted only a partial or "perfunctory" inquest. Thirdly where, following completion of a coroner's

inquest, further evidence relating to the death is brought to the attention of the Attorney General. I do not consider that these instances indicate any contemplation that the Attorney General could direct the coroner to conduct an inquest in circumstances where the triggering factors already referred to in Section 7,8,11 and 13 were absent and where there could not lawfully have been an inquest at all. In the absence of express wording to the effect that the jurisdiction of the coroner could be widened to embrace circumstances in which such triggering factors need no longer obtain, I am not prepared to make such a determination.

[47] An act or other legislative instruction is to be read as a whole so that an enactment within it is not to be treated as standing alone but is interpreted in its context as part of the instrument. Precision drafting rather than disorganised composition is presupposed. As I have already indicated in paragraph 42 of this judgment, there is a heavy jurisdictional aspect to the role of the coroner in the 1959 Act itself. Provision is made for the Lord Chancellor to appoint a coroner for each district in Northern Ireland. Section 6(1) provides that, subject to limited exceptions, a coroner shall hold inquests only within the district for which he is, or is deemed to have been, appointed under the 1959 Act. Whilst Section 14 permits the Attorney General to direct a coroner to conduct an inquest whether or not he is the coroner for the district in which the death has occurred, nonetheless that coroner shall "proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in which the death occurred, he were such coroner) …". It is very difficult to see how he could act as the coroner "for the district in which the death occurred" if the death occurred in a foreign jurisdiction where the law was wholly different to that which operated in his own district in N. Ireland and where as in this instance a reasoned inquiry had been carried out according to the law of the foreign jurisdiction. The one rider to that proposition may be that whilst there is no reference to the "finding" of a dead body as set out in 13(1)(a) in Section 14, the Attorney General does have power to direct an inquest in such circumstances.

[48] Accordingly I consider that to widen the powers of the Attorney General to direct an inquest outside the circumstances depicted in Section 13 would be so incongruous with the remaining sections of the Act that it would be contrary to any notion of precision drafting. In terms I consider that the Attorney General has been given a supervisory function in this instance which should not be exercised in circumstances where the criteria triggering the jurisdiction of the coroner, for example in Section 13(1), are not broadly met.

[49] <u>The application of the Human Rights Act 1998</u>

I do not consider that the Human Rights Act 1998 has any application in this instance. I am of this view notwithstanding that I do not consider that Mr O'Donoghue was correct to assert, as he did at paragraph 57 of his skeleton argument and before me, that the extent of the State's obligation to investigate the circumstances of the death of a deceased will only arise in circumstances where the State is implicated in the taking of that person's life. Menson v United Kingdom (2003) 37 EHRR CD 220 and In the Matter of an Application by Laurence Kincaid for Judicial Review (2007) NIQB 26 are both authorities for the proposition that there are circumstances where there is an obligation on the State to ensure there is some form of effective official investigation capable of establishing the cause of injuries/death and the identification of those responsible with a view to their punishment even when the State's agents were not responsible. The House of Lords has emphasised this approach in Jordan's case per the speech of Lord Bingham of Cornhill at paragraph 30. More recently in Regina (Al-Skeini and Others) v Secretary of State for Defence (2007) 3 AER 685 the House of Lords has determined that Section 6 of the 1998 Human Rights Act was to be interpreted as applying both when a public authority acted within the boundaries of the United Kingdom and when it acted outside those boundaries but within the jurisdiction of the United Kingdom for the purposes of Article 1 of the Convention.

[50] However these principles are wholly distinguishable from the present circumstances. I find no basis for the application of the Human Rights Act in circumstances where the United Kingdom has no extra territorial jurisdiction or control whatsoever over the place where the deceased died, as in this instance. In Al Skeini's case at paragraph 141 Lord Brown of Eaton-under-Haywood said:

> "141. The essential rationale underlying the presumption against extra-territoriality is that ordinarily it is inappropriate for one sovereign legislature to intrude upon the preserve of another. As Lord Hoffman recently observed in Lawson v Serco Ltd (2006) UKHL 3 at (6) (2006) 1 AER 823 at (6):
>
> > 'The United Kingdom rarely purports to legislate for the whole world … usually such an exorbitant exercise of legislative power would be both ineffectual and contrary to the comity of nations'."

[51] The Human Rights Act is a United Kingdom statute. The Act is expressed to apply to Northern Ireland under Section 22(6). It is not expressed to apply elsewhere in any relevant respect. See R (Quark Fishing

Limited) v Secretary of State for Foreign and Commonwealth Affairs (2006) 1 AC 529 at page 546 paragraph 36. Accordingly I am of the view that the provisions of the Human Rights Act 1998 do not extend territorially to the death of this young man having regard to the location where it occurred and the circumstances involved.

[52] In conclusion I acknowledge the strength of the argument made by Mr McCloskey that any consideration by me of hypothetical cases involving for example the return of deceased Northern Irish soldiers from Iraq to Northern Ireland and the right of families to have an inquest lies wholly outside the terms of the present litigation. It would be inappropriate for me to visit such circumstances when it has no relevance to the facts of this case. It is rarely wise at first instance to decide more in regard to the interpretation of the Convention than is necessary for the disposal of the case at hearing.

[53] I therefore dismiss the applicant's case. I shall invite counsel to address me on the issue of costs.