



An Chartlann Náisiúnta
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The McElwaine Inquest - Comparison of Certain Aspects with the
Position in this Jurisdiction.

Findings/Verdicts

Section 30 of our Coroner's Act 1962 states:

"Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred."

Section 31 (1) prohibits censure and exoneration:

" Neither the verdict nor any rider to the verdict at an inquest shall contain a censure or exoneration of any person. "

Section 31 (2)

" Notwithstanding anything contained in subsection (1) of this section, recommendations of a general character designed to prevent further fatalities may be appended to the verdict at any inquest. "

The Northern Ireland provisions are as follows:

Rule 15 of the Coroners Rules (NI):

"The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely: -

(a) who the deceased was,

(b) how, when and where the deceased came by his death;

(c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death. "

Rule 16:

"Neither the Coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule. "

The finding of the jury in the McElwaine case as reported in the press was as follows:

" We the jury find that on the morning of 26th April, 1986, two armed men were approaching a firing point on the main Roslea-Lisnaskea road. We do not believe that the armed men were challenged as no attempt was made to take off the safety catches of their weapons. We believe they were hit by the initial firing of soldiers B and C and given that it took soldiers A and D five minutes to get into position, when soldier A did approach the firing point, those covering him opened fire on what the jury believe was an injured man (McElwaine)."

The original finding went on to say: "We believe he could have been arrested at this point." However, this sentence was objected to by counsel for the Coroner, the MOD and the NIO on the grounds that it was outside the remit of the inquest. The coroner accepted this argument and the sentence was deleted from the finding, but not before it went on the public record.

It is interesting to compare the McElwaine case with the Brian Robinson (UVF) inquest, where the jury found that Robinson, who was unarmed, had been shot at "close proximity" by undercover soldiers as he lay wounded on the ground, a finding which (like the McElwaine finding) strongly implied that the victim could have been arrested rather than shot dead. (According to the CAJ's bulletin report, the Robinson case was reconsidered by the DPP, but no prosecution has followed. His widow has reportedly commenced civil proceedings.)

On a strict interpretation of the Rules, even the limited findings of the juries in both the Robinson and McElwaine cases are arguably ultra vires and could possibly be overturned in their entirety if the authorities appealed to the Northern Ireland High Court. (Presumably another inquest would have to be held in that event.) It is possible that the British side may be considering this step in the McElwaine case with a view to forestalling the establishment of an important precedent in this area? At a minimum it would seem likely that they will take steps to prevent possibly ultra vires findings or statements from getting on the public record before the Coroner can rule on their propriety.

Juries

Section 39 of our Act gives the Coroner a general discretion to hold an inquest with or without a jury. However, there are a number of instances where a jury is obligatory. Section 18 of the Coroners Act (NI) 1959 as amended has similar provisions.

Bearing in mind the suggestions from certain quarters that the finding of the jury in the McElwaine case was perverse (this suggestion was not made by the same people in response to the finding of the jury in the Robinson inquest), there must be a temptation for the British to tighten up this provision to provide for non-jury inquests in certain cases in Northern

Ireland where e.g. the Attorney General certifies that this is in the public interest." Provision for non-jury inquests might be dressed up to appear as if SACHR's proposal for a specific official to investigate disputed shootings by the security forces was being taken on board whereas if the same restrictions on compellability of witnesses etc. remain, this step might in reality be a further emasculation of the inquest process in such cases.

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19 January 1993