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CITATION

These reports are cited thus:

[1980] 2 All ER

REFERENCES

These reports contain references to the following major works of legal reference described in the manner indicated below.

Halsbury's Laws of England

The reference 35 Halsbury's Laws (3rd Edn) 366, para 524, refers to paragraph 524 on page 366 of volume 35 of the third edition, and the reference 26 Halsbury's Laws (4th Edn) 296, para 577 refers to paragraph 577 on page 296 of volume 26 of the fourth edition of Halsbury's Laws of England.

Halsbury's Statutes of England

The reference 5 Halsbury's Statutes (3rd Edn) 302 refers to page 302 of volume 5 of the third edition of Halsbury's Statutes of England.

English and Empire Digest

References are to the replacement volumes (including reissue volumes) of the Digest, and to the continuation volumes of the replacement volumes.

The reference 44 Digest (Repl) 144, *1240*, refers to case number 1240 on page 144 of Digest Replacement Volume 44.

The reference 28(1) Digest (Reissue) 167, *507*, refers to case number 507 on page 167 of Digest Replacement Volume 28(1) Reissue.

The reference Digest (Cont Vol D) 571, *678b*, refers to case number 678b on page 571 of Digest Continuation Volume D.

Halsbury's Statutory Instruments

The reference 12 Halsbury's Statutory Instruments (Third Reissue) 125 refers to page 125 of the third reissue of volume 12 of Halsbury's Statutory Instruments; references to subsequent reissues are similar.

CORRIGENDA

[1980] 1 All ER

p 1062. **Re JS (a minor).** Counsel: *'Swinton Thomas QC* and *Jean Henderson* for the plaintiff; *Anthony Hollis QC* and *Alan Bayliss* for the mother; Mr R appeared in person; *Nicholas Wall* for the minor' instead of as printed.

[1980] 2 All ER

p 1. **Oram (Inspector of Taxes) v Johnson.** Line *e* 5: the final sentence should read 'The appeal would accordingly be allowed'.

p 44. **Hyundai Heavy Industries Ltd v Papadopoulos.** Line *f* 4: for 'buyers' read 'builders'.

p 253. **McIlkenny v Chief Constable of West Midlands Police Force.** Line *d* 3: delete the words 'it is recorded in'.

p 293. **Rank Film Distributors Ltd v Video Information Centre.** Solicitors: for *'Attwater & Liell,* Harlow' read *'Paul Bond & Co'*.

p 641. **Re Racal Communications Ltd.** Line *f* 6 should read 'Racal's quotations department. The institution of criminal proceedings being contem-'.

p 694. **South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union.** Line *j*4: for 'consistent' read 'inconsistent'.

Cases reported in volume 2

Oram (Inspector of Taxes) v Johnson

CHANCERY DIVISION
WALTON J
11th FEBRUARY 1980

Capital gains tax – Assessment – Deduction from consideration on sale – Expenditure wholly and exclusively incurred in enhancing value of asset – Taxpayer contributing his own skill and labour in enhancing value of asset – Whether value of taxpayer's personal skill and labour in enhancing the value of his property 'expenditure' incurred by taxpayer – Finance Act 1965, Sch 6, para 4(1)(b).

In 1968 the taxpayer purchased a freehold property for £2,250. Having improved and enlarged the property, he sold it in 1975 at a price of £11,500. The taxpayer claimed that his own labour and skill in improving the property, which he estimated at £1,700 on the basis of 1,700 hours of labour at £1 per hour, was 'expenditure wholly and exclusively incurred' by him on the property within the Finance Act 1965, Sch 6, para 4 (1)(*b*)[a] and, accordingly, was an allowable deduction in computing his chargeable gains arising on the sale. The General Commissioner upheld the taxpayer's claim. The Crown appealed.

Held – For the purposes of para 4(1)(*b*) of Sch 6 to the 1965 Act 'expenditure' by the owner of asset incurred for the purpose of enhancing its value was expenditure in money or money's worth which diminished the owner's stock of assets by a precisely ascertainable amount. Since the labour and skill of the taxpayer was not capable of such precise ascertainment it was not 'expenditure' within para 4(1)(*b*) and was therefore not deductible. The appeal would accordingly be allowed (see p 5 *g* to *j* and p 6 *b c*, post).

Notes

For the classes of expenditure allowable as a deduction from the consideration in the computation of the gain arising on the disposal of an asset, see 5 Halsbury's Laws of England (4th Edn) para 147.

For the Finance Act 1965, Sch 6, para 4, see 34 Halsbury's Statutes (3rd Edn) 931.

Paragraph 4 has been replaced by s 32 of the Capital Gains Tax Act 1979 with effect from 6th April 1979.

Cases cited

Chandris v Union of India [1956] 1 All ER 358, [1956] 1 WLR 147, CA.

Fundfarms Developments Ltd (in liquidation) v Parsons (Inspector of Taxes) [1969] 3 All ER 1161, [1969] 1 WLR 1735, 45 Tax Cas 707.

Case stated

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of Abingdon in the County of Oxford held on 11th December 1978, the taxpayer, Keith David Bebb Johnson of 6 Fairlawn Wharf, Abingdon, Oxfordshire, appealed against an assessment to capital gains tax made on him for the year 1975–76 in the amount of £9,250·00.

2. The following facts were proved, admitted or agreed. (1) On 10th May 1968 the taxpayer purchased a freehold dwelling house known as Yew Tree Cottage, Linton, Ross-on-Wye, Herefordshire. (2) The cost of acquisition of the property was £2,250·00.

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a Paragraph 4(1), so far as material, is set out at p 4 *j* and p 5 *c*, post

(3) The taxpayer sold the property on 29th November 1975 at a price of £11,500·00. (4) The property was not at any time the only or main residence of the taxpayer. (5) Between the purchase and sale of the property by the taxpayer, he carried out extensive improvement and enlargement works to the property which transformed it from a derelict, uninhabited two-bedroomed cottage with no modern amenities to a desirable four-bedroomed cottage with all modern amentities. (6) The following allowable expenditure was agreed by the Crown as deductible from the total capital gain arising on the sale: (a) expenses on acquisition comprising legal costs: £90; (b) payments made by the taxpayer for materials and hired labour for which records were kept and invoices had been produced: £980; and (c) expenses on disposal comprising legal costs and estate agents' fees: £431.

3. It was contended by the taxpayer that the undermentioned items of further expenditure, which had been incurred by him wholly and exclusively on the asset and being expenditure reflected in the state or nature of the asset at the time of disposal, qualified as deductions from the total gain and that the inspector of taxes had been wrong in law for disallowing such items: (a) £2,220, being the taxpayer's estimated value of work during the two years following the acquisition of the cottage on labour, incurred by him in carrying out the works on the cottage between acquisition and disposal. In support of that amount the taxpayer produced schedules giving a summary of the condition of the cottage on acquisition and on disposal and an itemised list of the man-hours expended in carrying out the improvement and enlargement works. Of the 2,220 hours thus claimed, the taxpayer stated that between 400 and 500 represented his estimate of the employment by him by way of casual work of local labour, his son and friends to whom he estimated he had paid an average of £1·00 per hour. The remaining 1,720 or 1,820 hours represented the value of his own personal labour priced at £1·00 per hour which was contended to be a reasonable sum and much less than would have been paid if commercial labour had been hired to achieve the same enhancement in the value of the cottage as had been in fact achieved by these methods. (b) £500, being the taxpayer's estimate of the value of further payments and labour expended, made by him after the initial three-year period to local craftsmen and for casual labour. No receipts or other records were available because the records had lapsed, for the reason that this work was over a long period and the assistance was obtained and paid for as and when required and on a casual, friendly, basis.

The taxpayer claimed that as all of the above-mentioned expenditure was actually incurred by him and had beyond doubt resulted in the enhancement of the value of the cottage by the time of its disposal it was unreasonable that all or any of such expenditure should have been disallowed in computing the chargeable gain.

4. It was contended by the Crown as follows: (a) The assessment of capital gains was determined by the statutory provisions in that behalf which were contained in ss 19(1) and 22(9) of and Part I of Sch 6 to the Finance Act 1965. The provisions of para 4(1)(*b*) were those particularly relevant to the items in dispute in the present case. That paragraph restricted the sums allowable as deductions from the consideration in computing a gain 'to the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset'. The 'expenditure' in that paragraph referred only to the expenditure of money and that did not admit an allowance for work performed by a taxpayer himself even though the result of such work did in fact enhance the value of the asset at the time of disposal. That, in the submission of the Crown, prevented the deduction of the estimated figure of £1,720 to £1,820 advanced by the taxpayer in this case. (b) By reference to *Bury & Walkers v Phillips (Inspector of Taxes)* (1951) 32 Tax Cas 198 it was further contended that estimated expenditure, unsupported by receipts or other documentary evidence, did not entitle a taxpayer as of right to claim such expenditure as an allowance against tax. Therefore, the claims by the taxpayer for deductions of between £400 and £500 out of the £2,220 item and also the further £500 stated to have been paid out on casual labour on the cottage had been disallowed as deductions in assessing the chargeable capital gain in that case.

5. The Commissioners who heard the appeal, held—

'(a) Under Paragraph 4(1)(*b*) of the Sixth Schedule to the Finance Act 1965 "the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of disposal" is allowable as a deduction in the computation of the gain accruing to a person on the disposal of an asset. The Act contains no definition or qualification limiting "expenditure" to money alone and if, as in the present case, there is no doubt that the value of the asset giving rise to the capital gain has been enhanced considerably by the expenditure of (inter alia) the personal time, skill and labour of the taxpayer we have decided that the expenditure of such time, skill and labour falls within the meaning and intention of the Act.

'(b) From the evidence of [the taxpayer] we found as facts that he expended approximately 1,700 hours of his own skill and labour wholly and exclusively upon the enhancement of the value of the cottage and that he made actual payments for casual labour of approximately the amounts stated in his evidence for the same purposes.'

The Commissioners therefore determined the assessment as follows:

		£
'Sale price of Yew Tree Cottage		11,500
Less allowances:—		
Purchase price	2,250	
Expenditure on materials and labour supported by receipts	980	
Expenditure of own labour as estimated by [the taxpayer]	1,700	
Expenditure on estimated paid labour unsupported by receipts	400	
Expenditure on estimated additional work after initial 3-year period unsupported by receipts	300	
Legal costs and survey fees:		
on acquisition	90	
on disposal	431	6,151
Chargeable gain		£5,349'

6. The Crown, immediately after the determination of the appeal, declared to the commissioners its dissatisfaction therewith as being erroneous in point of law and in due course required them to state a case for the opinion of the High Court pursuant to s 56 of the Taxes Management Act 1970.

7. The questions of law for the opinion of the court were: (a) whether in para 4(1)(*b*) of Sch 6 to the Finance Act 1965 the expression 'the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of disposal' related only to the expenditure of money or whether a sum which fairly represented the expenditure of the personal skill and labour of the taxpayer with the same effect on the value of the asset was deductible in assessing the chargeable capital gain arising from the disposal of the enhanced asset; (b) whether, on a finding of fact that a taxpayer incurred actual expenditure within para 4(1)(*b*), such expenditure or such proportion thereof as might be determined by the General Commissioners was properly deductible from the total gain notwithstanding that no receipts or other

documentary records were kept by the taxpayer to support his estimate of the amount so expended.

C H McCall for the Crown.
The taxpayer appeared in person.

WALTON J. This case arises on a case stated under s 56 of the Taxes Management Act, 1970, by the Commissioners for the General Purposes of the Income Tax for the Division of Abingdon in the County of Oxford; and it arises out of the purchase by the taxpayer, on 10th May 1968, of a freehold dwelling house known as Yew Tree Cottage, Linton, Ross-on-Wye, Herefordshire. When the taxpayer acquired the property it was in a pretty poor state, and he acquired it for the sum of only £2,500. He sold the property on 29th November 1975, at a price of £11,500. As he pointed out to me, that is an increase by a factor of five, whereas during the same period the government's index of house prices rose by 2·15 times thus clearly indicating that something very much more than inflation was at work, and, indeed, so it was. The property was not at any time the only or main residence of the taxpayer, so there is no question at all but that on his disposal of Yew Tree Cottage he became chargeable on whatever was the capital gain he made on it, computed according to the rules of law largely laid down in the Finance Act 1965.

The argument in front of the General Commissioners turned really on two matters, and I will get the one which is no longer in issue out of the way. There was certain expenditure, totalling a sum of £700, which the taxpayer estimated was the amount of money that he had actually paid out for labour and work, but in respect of which he had not got receipts. Of course, that always poses a difficult problem for the Revenue, but suffice it to say that, having heard the taxpayer, the General Commissioners were quite satisfied that that money had been paid out by him, and there is, therefore, no doubt but that that £700 is deductible from the sale price in order to arrive at the amount of the chargeable gain. So also, of course, beyond all question, is the original purchase price of £2,250, the expenditure on materials and labour supported by receipts, which amounted to £980, and the legal costs and survey fees on acquisition and disposal.

Having taken all that off, the taxpayer now wishes to take off, and the General Commissioners found that he was entitled to do so, a further sum of £1,700. That represents the value of work which the taxpayer himself carried out on the property, the product of his own skill and labour wholly and exclusively spent on the enhancement of the value of the cottage. He has taken the comparatively modest sum of £1 per hour as the value of his work in that way, and hence 1,700 hours work out, at the rate he claims, at £1,700. The General Commissioners held that he was entitled to make that deduction, but from that finding the Crown has appealed and that is the sole point which is at issue in front of me.

The statutory provisions are really very simple, although that is not to say that they are all that easy to interpret. First of all, if I may go to s 19(1) of the Finance Act 1965 that provides: 'Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.' So that section tells one that, somewhere later in the Act, one will find rules for computing the chargeable gain. Section 22(9) then indeed provides: 'The amount of the gains accruing on the disposal of assets shall be computed in accordance with Part I of Schedule 6 to this Act . . .' There are various qualifications, but I do no think that they affect anything I have to decide.

I therefore go straight away to para 4 of Sch 6 to the 1965 Act. Paragraph 4(1) provides: 'Subject to the following provisions of this Schedule, the sums allowable as a deduction from the consideration in the computation under this Schedule of the gain accruing to a person on the disposal of an asset shall be restricted to . . .' Pausing there for one moment before one comes to the items to which they are restricted, it says 'sums allowable as a deduction'. One will therefore expect to find in the following paragraphs matters set out basically in terms of money, because one can deduct from the

consideration in the computation of a gain accruing to a person on the disposal of an asset only money sums; there is no machinery generally provided for deducting anything else. Then, para (*a*) provides 'the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset . . .'. So there one has to reduce to pounds and pence 'the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset', and it goes on to deal with incidental costs and matters of that sort, with which I am not concerned. So there undoubtedly one can take into consideration what is given in money or money's worth wholly and exclusively for the acquisition of the asset, which might very well be in some cases services and matters of that nature which otherwise would not easily translate into money.

Next comes para (*b*), which is the crucial one here:

> 'the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset.'

It is that paragraph which is the one in issue, it being conceded that the taxpayer's work was undoubtedly 'reflected in the state or nature of the asset at the time of the disposal'.

Counsel for the Crown calls my attention to sub-para (2) of para 4, which runs as follows:

> 'For the purposes of this paragraph and for the purposes of all other provisions of this Part of this Act the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together—(*a*) in the case of the acquisition of an asset, with costs of advertising to find a seller, and (*b*) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Schedule . . .'

Counsel for the Crown submits to me that sub-para (2) tends to show, without providing a statutory definition, that 'expenditure' is intended to be something which is paid out by the person incurring the expenditure. I see the force of that, but I do not myself think that that really governs the matter sufficiently for me to be able to rely on it.

So I return basically to para 4(1)(*b*), 'the amount of any expenditure'. It seems to me that, although one does in general terms talk about expenditure of time and expenditure of effort, having regard particularly to the opening words of para 4(1), where the expenditure is to be 'a deduction', the primary matter which is thought of by the legislature in para 4(1)(*b*) is something which is passing out from the person who is making the expenditure. That will most normally and naturally be money, accordingly presenting no problems in calculation; but that will not necessarily be the case. I instance the case (it may be fanciful, but I think it is a possible one and tests the principle) of the taxpayer employing a bricklayer to do some casual bricklaying about the premises, the remuneration for the bricklayer being three bottles of whisky at the end of the week. It seems to be that that would be expenditure by the taxpayer, because out of his stock he would have to give something away to the person who was laying the bricks, and I do not think that that would present any real problems of valuation or other difficulty.

But when one comes on to his own labour, it does not seem to me that that is really capable of being quantified in this sort of way. It is not something which diminishes his stock of anything by any precisely ascertainable amount; it is something which would

have to be estimated. It has been estimated here by taking the very modest sum of £1 an hour, but the fact that the taxpayer has been modest in his demands does not enable one to escape from the crucial crunch, which is how, in a case which was contested and where the amount claimed was something which was larger than was obviously right, one would test it. It seems to me that there would undoubtedly have to be found in the end some machinery for translating into money terms the work put in by the owner of the asset himself, if that was to be allowable. But it seems to me that that does not fall into the ordinary meaning of 'the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf'. The wording, to my mind, just does not fit that sort of situation.

It is perhaps a matter of first impression based on the impression that the word 'expenditure' makes on one, but I think that the whole group of words, 'expenditure', 'expended', 'expenses' and so on and so forth, in a revenue context, mean primarily money expenditure and, secondly, expenditure in money's worth, something which diminishes the total assets of the person making the expenditure, and I do not think that one can bring one's own work, however skilful it may be and however much sweat one may expend on it, within the scope of para 4(1)(*b*).

This may seem hard, and I am sure the taxpayer will think it hard, but I think there is another side to the coin. Suppose the taxpayer were (as it were) to be able to charge the Revenue up in this way with his notional expenditure of £1,700 worth of work. Would it not then be just that the Revenue should charge the taxpayer up with his receipt of the £1,700 as moneys earned by him in his subsidiary trade of a bricklayer, or whatever? I think the Revenue would be quite happy to allow him the £1,700 here provided they could add to his notional income for the purposes of income tax, including tax at the higher rates, the sum of £1,700. Of course, in the taxpayer's case that may be an absurd matter, but a solicitor who acts for himself and thus saves himself money on conveyancing might present a case where the adding of a notional sum might look a very real proposition. However, it seems to me, as I say, that although it looks very hard on the taxpayer that this notional expenditure should be disallowed, I think that, if one follows it through, perhaps the taxpayer has not been so hardly done by as would appear at first blush.

I am very glad to say that in this case, there being such a narrow point at issue and there being no case which really is of much assistance (although I am very much indebted to counsel for the Crown for having cited to me a couple of cases which throw a very fitful light on the subject; but, they being the only cases that exist, it was his duty to cite them to me), it being a matter on which there is no authority down to this moment, the Crown is not asking for costs, and therefore, of course, there will be no order for costs.

Appeal allowed.

Solicitors: *Solicitor of Inland Revenue.*

Rengan Krishnan Esq Barrister.

R v Hammersmith Coroner, ex parte Peach

COURT OF APPEAL, CIVIL DIVISION
LORD DENNING MR, BRIDGE LJ AND SIR DAVID CAIRNS
14th DECEMBER 1979

Coroner – Inquest – Jury – Circumstances in which coroner should sit with jury – Circumstances the continuance or possible recurrence of which would be prejudicial to health or safety of public – Deceased dying from blow on the head received at demonstration – Allegation that deceased hit by police officer using unauthorised weapon – Whether deceased dying in circumstances the continuance or possible recurrence of which would be prejudicial to health or safety of public – Whether coroner required to sit with jury – Coroners (Amendment) Act 1926, s 13(2)(e).

The deceased was struck a violent blow on the head while watching a demonstration which had become riotous and which the police were attempting to disperse. Allegations were made that the blow had been struck by a police officer. The deceased died from the blow which, according to a pathologist's report, had been made by a much heavier weapon than a police truncheon. Extensive police inquiries followed and a number of unauthorised weapons were found in the lockers of police who had been present at the demonstration. At the inquest an application was made on behalf of the deceased's family that the coroner sit with a jury because the deceased's death had 'occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public' within s 13 (2) (e)[a] of the Coroners (Amendment) Act 1926. The coroner refused the application. The applicant applied to the Divisional Court for orders of certiorari to quash the coroner's decision not to sit with a jury and mandamus requiring him to do so, but those orders were refused. On appeal to the Court of Appeal,

Held – On the true construction of s 13(2)(e) of the 1926 Act a coroner was required to summon a jury to sit with him at an inquest if the circumstances of death were such that similar fatalities might recur and it was reasonable to expect that proper action ought to be taken by some responsible public body to prevent that happening. The fact that there was reason to suspect that the deceased had died from the unauthorised use of a potentially lethal weapon by a police officer was a circumstance which, under s 13(2)(e), required the coroner to sit with a jury, since if that suspicion was confirmed it would be reasonable to expect the police authority to take appropriate steps to prevent such use in the future. Orders of certiorari and mandamus would accordingly issue (see p 8 *e f*, p 10 *b* to *j* and p 11 *b* to *j*, post).

Notes

For the circumstances in which a coroner may summon a jury when holding an inquest on a death and the scope of the inquest, see 9 Halsbury's Laws (4th Edn) paras 1082, 1110.

For the Coroners (Amendment) Act 1926, s 13, see 7 Halsbury's Statutes (3rd Edn) 269.

Appeal

Mr Roy Peach ('the applicant'), the brother of Clement Blair Peach deceased, appealed against the judgment of the Divisional Court of the Queen's Bench Division (Lord Widgery CJ and Griffiths J) given on 15th November 1979 dismissing his application for an order of judicial review (1) to quash the decision of Her Majesty's Coroner at Hammersmith ('the coroner') not to summon a jury at the inquest on the deceased, (2) to order the coroner to summon a jury, and (3) to prohibit the coroner from continuing

a Section 13(2), so far as material, is set out at p 8 *g* to *j*, post

the inquest until a jury was summoned. The facts are set out in the judgment of Lord Denning MR. a

John Mortimer QC and *Christine Booker* for the applicant.
Simon Brown for the coroner.
Laurence Marshall for the Chief Commissioner of Police.

LORD DENNING MR. On the afternoon of 23rd April 1979 there was a riotous assembly in Southall. Not only riotous, but unlawful. The police came on the scene to try and keep order. In the course of it, Mr Clement Blair Peach was struck on the head. We do no know how it happened. He was carried off to hospital, where he died early the next morning. b

An examination of the body was made by a distinguished forensic professor, Professor Mant of Guy's Hospital, in the presence of another, Professor Bowen, who was appointed by the coroner, and the coroner himself. I will read two or three sentences from their report. It says: c

> 'The deceased was taking part in a political demonstration on the evening of 23rd April, 1979. He sustained a head injury and was taken to Ealing Hospital by ambulance arriving at about 8 p.m. [And after describing the injuries found:] Death was pronounced at 12.10 a.m. on 24th April 1979 . . . The cause of death was: Extra dural haemorrhage due to fracture of the skull . . . d
>
> '*Remarks* (I) Death has resulted from a single heavy blow to the left side of the head. There were no other injuries upon the deceased. (II) The instrument used, must have been very weighty and yet at the same time was malleable and without a hard edge as there were no lacerations to the scalp. (III) A police truncheon is relatively light and when used usually lacerates the scalp unless the head is protected by thick hair or head gear . . . (VII) The instrument used could have been a lead weighted rubber "cosh" or hosepipe filled with lead shot, or some like weapon.' e

That evidence shows there is reason to suspect that the weapon was a heavy weighted weapon, much more harmful than a police truncheon.

There has to be an inquest as to the cause of death. The question for decision is whether it is to be held by a coroner with a jury or without a jury. This depends on the true interpretation of the statute. f

Before 1926 the coroner always sat with a jury. It was compulsory in all cases. After 1926 it was not always compulsory to have a jury. But it still remained compulsory in certain categories specified in s 13(2) of the Coroners (Amendment) Act 1926. That subsection, as originally enacted, provides: g

> 'If it appears to the coroner either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect—(*a*) that the deceased came by his death by murder, manslaughter or infanticide; or (*b*) that the death occurred in prison or in such place or in such circumstances as to require an inquest under any Act other than the Coroners Act, 1887; or (*c*) that the death was caused by an accident, poisoning or disease notice of which is required to be given to a government department, or to any inspector or other officer of a government department, under or in pursuance of any Act; or (*d*) that the death was caused by an accident arising out of the use of a vehicle in a street or public highway; or [and this is the one which is important today] (*e*) that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public; he shall proceed to summon a jury . . .' h j

So in those five categories the coroner was bound to summon a jury, as he had always done in the past.

Forty years later a Home Office committee inquired into the duties of coroners. The chairman was Judge Norman Brodrick QC. In November 1971 they presented a report