

INQUESTS ORDINANCE, 1959

(No. 6 of 1959)

An Ordinance to provide for the holding of inquests and matters relating thereto.

[1st August, 1959]

ENACTED by the Governor of the Colony of North Borneo with the advice and consent of the Legislative Council as follows:-

Short title and commencement.

1. This Ordinance may be cited as the Inquests Ordinance, 1959, and shall come into operation on such date* as the Governor may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires –

“cause of death” includes not only the apparent cause of death as ascertainable by inspection or *post-mortem* examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to how the deceased came by his death and whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person;

“Government” includes the Government of the Federation and the Government of any State thereof;

“Medical Officer” means a medical practitioner employed by the Government and if no such officer is available then any duly registered medical practitioner or any hospital assistant authorized in writing by the Director of Medical Services either

* 1st August, 1959 – see G.N.S. 73/59.

generally or for any specific purpose to exercise the functions of a Medical Officer under all or any of the provisions of this Ordinance or of the Criminal Procedure Code [4 of 1959.];

“Native Officer” means a Native Officer as defined in the Criminal Procedure Code [4 of 1959.];

“officer in charge of a police station” means the officer appointed to perform the duties of that office and includes, when such officer is absent therefrom or unable from illness or other cause to perform his duties, the police officer present and acting in the station who is next in rank below such officer;

“place” includes a house, building, tent and vessel;

“Public Prosecutor” shall have the same meaning as in the Criminal Procedure Code [4 of 1959.].

Duty of officer in charge of station.

3. (1) If an officer in charge of a police station receives information –
- (a) that a person has committed suicide; or
 - (b) that a person has been killed by another, or by an animal, or by machinery, or by an accident; or
 - (c) that a person has died under circumstances in which some other person may have committed an offence; or
 - (d) that a person has died or has disappeared in circumstances which raise a reasonable presumption that he has died, and the cause of such death or presumed death is not known,

he shall immediately give information thereof to a Magistrate and shall himself immediately proceed, or shall direct some other police officer immediately to proceed, to the place where the body of such deceased person is, or, if the body has disappeared, to the place where the deceased person was last seen alive, and there shall make an investigation and draw up a report of the apparent cause of death, describing, if the body is available, such wounds,

fractures, bruises and other marks as may be found thereon, and stating in what manner or by what weapon or instrument, if any, the same appear to have been inflicted, and, whether the body is available or not, giving an account of such objects and circumstances as in his opinion may relate to the cause of death or the person, if any, who caused the death:

Provided that –

- (i) if no police officer is available to make the investigation required by this subsection, the Magistrate may direct a Native Officer or some other fit and proper person (hereinafter referred to as an “authorized officer”) to carry out such investigation and to draw up the report and forward it to the officer in charge of the police station; and
- (ii) if the Magistrate is satisfied that no useful purpose would be served by any person proceeding to the place where the body is or, if the body has disappeared, to the place where the deceased person was last seen alive, he may, by order in writing under his hand, dispense with such requirement.

(2) Any police, Native, or other authorized officer making an investigation under this section may exercise all the powers conferred upon a police officer under the provisions of Chapter X of the Criminal Procedure Code [4 of 1959.].

(3) A report of such investigation shall be made and signed by the officer in charge of the police station and forwarded by him to the Magistrate:

Provided that, if, as a result of the investigation, such officer drafts a charge under section 109 of the Criminal Procedure Code in respect of the death of such person, he shall forward the report to the Public Prosecutor and shall inform the Magistrate in writing of the commencement of such proceedings.*

Duty of officer to arrange for *post-mortem* examination in certain cases.

4. (1) Every person making an investigation under section 3 shall, if there appears to him any reason to suspect that the deceased came by his death in a sudden or unnatural manner or by violence, or that his death resulted in any way from or was accelerated by any

*Section 109 of the Criminal Procedure Code was repealed by Ordinance 26 of 1961.

unlawful act or omission on the part of any other person, at once inform the nearest Medical Officer, and shall take or send the body to the nearest Government hospital or other convenient place for the holding of a *post-mortem* examination of the body by a Medical Officer:

Provided that, if such person is satisfied as to the cause of death and that the deceased came by his death by accident, or that in all the circumstances of the case, including the state of the body and the difficulties of communication, he is of the opinion that no useful purpose would be served by a further examination, he may order the body to be buried forthwith.

(2) The person making the investigation shall not remove the body if it appears to him that it should be viewed by a Magistrate in the place where it was found.

Post-mortem examination of body.

5. (1) Upon receiving the information referred to in section 4 a Medical Officer shall, as soon as practicable, perform a *post-mortem* examination of the body of the deceased.

(2) The Medical Officer, if it is necessary in order to ascertain the cause of death, shall extend the examination to the dissection of the body and an analysis of any portion thereof, and may cause any portion thereof to be transmitted to any person permitted to give a report under the provisions of subparagraphs (i), (ii), (iii) or (v) of paragraph (b) of subsection (2) of section 340A of the criminal Procedure Code [4 of 1959.] and any report by such person shall be admissible in evidence without further notice or procedure at any inquest.

(3) If a *post-mortem* examination is held in pursuance of this section or pursuant to an order under subsection (2) of section 9 or if exhumation of a body is carried out in pursuance of this Ordinance the body or remains thereof shall not be buried or reburied as the case may be except under and in accordance with the order of the police officer making the investigation or a Magistrate having jurisdiction in the district where such body or remains may be.

(4) Subsection (3) shall not be deemed to require an order of a Magistrate to dispose of any portion of a body which may have been sent for examination under the provisions of subsection (2) and such portion may, unless a Magistrate otherwise orders, be

disposed of in such manner as the Director of Medical Services may by any general or special direction direct.

Report of Medical Officer.

6. The Medical Officer making any such examination shall draw up a report of the appearance of the body and of the conclusion which he draws therefrom, and shall certify as to the cause of death and shall date and sign the report and transmit it to the officer in charge of the police station who shall attach it to the report forwarded under section 3.

Duty of Magistrate on receipt of report.

7. (1) If the Magistrate on receipt of the report referred to in section 3 shall be satisfied as to the cause of death, and that the death did not result in any way from, or was not accelerated by, any unlawful act or omission, he shall report to the Public Prosecutor through the Resident the cause of death as ascertained to his satisfaction, with his reasons for being so satisfied, and shall at the same time transmit to the Public Prosecutor through the Resident all reports and documents in his possession connected with the matter.

(2) A Magistrate may in the circumstances mentioned in paragraph (d) of subsection (1) of section 3 in his discretion hold an inquest if there is no body available.

(3) A Magistrate shall not hold or continue any inquest under this Ordinance if he has reason to believe that criminal proceedings against any person for having caused the death of the deceased have been, or are about to be, or should be, commenced.

(4) In all other cases, the Magistrate shall proceed as soon as may be to hold an inquest.

Death of a person in custody of police or in any mental hospital.

8. Notwithstanding the provisions of section 7, when any person dies while in the custody of the police, or in a mental hospital, or prison or whilst in the custody of any public officer, or in custody of any other place appointed or authorized under any written law as a place in which any person or persons of a particular class may lawfully be detained, the officer who had the custody of such person or was in charge of such mental hospital, prison or such

other place, as the case may be, shall forthwith give intimation of such death to the nearest Magistrate; and such Magistrate or some other Magistrate shall hold an inquest into the cause of death and, for such purpose, may designate any person to make the investigation and report referred to in section 3, and such person shall for the purposes of such investigation be deemed to be a police officer.

Powers of Magistrate.

9. (1) A Magistrate holding an inquest shall have all the powers which he would have in holding an inquiry into an offence under the provisions of the Criminal Procedure Code [4 of 1959.].

(2) A Magistrate holding an inquest, if he considers it expedient that the body of the deceased person should be examined by a Medical Officer in order to discover the cause of death, may, whether a *post-mortem* examination has been performed under section 5 or not, issue his order to a Medical Officer to perform a *post-mortem* examination of such body, and may for such purpose order such body to be exhumed.

(3) The Magistrate holding the inquest may, if he thinks fit, summon to assist him a jury consisting of not less than three and not more than five persons, of whom at least half shall, if possible, be of the same race as the deceased.

Magistrate may view body.

10. A Magistrate holding an inquest shall ordinarily view the body of the deceased and may for that purpose cause such body to be exhumed:

Provided that a Magistrate may in his discretion dispense with viewing the body if, for a reason which he shall record, he considers it to be unnecessary.

Inquest to be made by Magistrate.

11. A Magistrate holding an inquest shall inquire when, where, how and after what manner the deceased came by his death, and also whether any person is criminally concerned in the cause of such death.

Evidence and finding to be recorded.

12. (1) The Magistrate holding an inquest shall record the evidence in the manner provided in Chapter XX of the Criminal Procedure Code [4 of 1959.] for the recording of evidence in trials, other than trial of summons cases, and shall record his finding thereon and the reasons therefor, and shall forthwith transmit to the Public Prosecutor through the Resident the original of such evidence and finding duly authenticated by his signature, or a copy of such evidence and finding certified under his hand as correct.

(2) The place in which any inquest is held shall be a place open to the public:

Provided that a Magistrate conducting an inquest may, on special grounds of public policy or expediency, in his discretion exclude the public or any particular person or persons at any stage of the inquest from the place in which the inquest is being held.

Powers of Public Prosecutor in inquests.

13. (1) Notwithstanding the provisions of section 7, the Public Prosecutor may at any time direct a Magistrate to hold an inquest into the cause of, and the circumstances connected with, any death such as is referred to in sections 3 and 8, and the Magistrate to whom such direction is given shall thereupon proceed to hold an inquest, and shall record his finding as to the cause of death and also as to any of the circumstances connected therewith with regard to which the Public Prosecutor may have directed him to make inquiry.

(2) When the proceedings at any inquest have been closed and it appears to the Public Prosecutor that further investigation is necessary, the Public Prosecutor may direct the Magistrate to re-open such inquest and to make further investigation, and thereupon the Magistrate shall have full power to re-open the inquest and make further investigation, and thereafter to proceed in the same manner as if the proceedings at such inquest had not been closed.

(3) When giving any direction under this section, the Public Prosecutor may also direct whether the body shall or shall not be exhumed.

(4) All directions given under this section shall, without unnecessary delay, be complied with by the Magistrate to whom they are addressed.

(5) If it is made to appear to the Public Prosecutor that it is expedient that an inquest commenced by one Magistrate should be continued by another, he may direct both such Magistrates accordingly, and such Magistrates shall comply with such direction.

Procedure where jury has been summoned.

14. (1) If a jury has been summoned under subsection (3) of section 9, the Magistrate shall not be required to arrive at or record a finding, but shall direct the jury as to their verdict, and shall record a note of his direction and the verdict of such jury or, if they fail to agree, of the majority thereof which shall be deemed to be the finding of the jury and the provisions of sections 12 and 13 shall in such case be construed with the modifications necessary to give effect to this section.

(2) The jury or a majority thereof, as the case may be, shall sign the verdict recorded under subsection (1).

Admissibility of medical report in certain cases.

15. Any Medical Officer who has made any written report under the provisions of this Ordinance shall, if the Court so requires, be called as a witness but in his absence for reasonable cause any written report of such Medical Officer shall be admissible in evidence.