TIMOLS MAY YET SEE PAPERS

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THE Timol family may have won its fight to see the inquest documents relating to their son's death while being detained by the Security Police. This is the result of a judgment given at the Pretoria Supreme Court today.

Opening the judgment, Mr Justice Cillie said the judgment he was giving was on behalf of both members of the court (himself and Mr Justice Marais).

The post-mortem report was sent to the magistrate who normally conducts inquests. The magistrate decided to hold an inquest and returned the report to the public prosecutor.

The police obtained additional documents on the affair which were sent to the office of the prosecutor. These documents were not handed to the magistrate.

On November 29, the attorneys for the Timol family wrote to the prosecutor asking for all documents to be made available before the hearing. The request was refused and the attorneys were told no documents had yet been placed before the magistrate.

At the actual hearing counsel for the Timol family said he had not seen the documents and he had been led to believe the normal procedure at inquests was to let all interested parties see the evidence placed before the prosecutor by the police.

He asked to see the documents.

The magistrate then said he wanted to "conduct the inquest as he would a criminal trial" where statements could only be disclosed in exceptional circumstances.

The magistrate would allow the court to adjourn after each witness had been led to allow counsel to study the evidence. Council could cross-examine witnesses fully.

After a short adjournment to allow the prosecutor to find out whether the police wanted to be represented by him, the prosecutor said his function was to lead evidence and he must therefore possess all relevant documents. Counsel could only cross-examine witnesses.

The prosecutor assured the court all evidence relevant to the death of Timol would be led.

The magistrate then said he had not yet seen the documents. There was an adjournment while he considered them to satisfy himself a death had occurred and that an inquest should be held.

He quoted extensively from the Inquest Act saying that for the administration of justice to be complete and to set public fears at rest inquests should be held if there was reason to believe a death had not been due to natural causes.

But this decision was not final as it could be overtaken by the attorney general on during the inquest hearing or by the Attorney General on receipt of the inquest papers.

Mr Justice Cillie said: "To refuse interested parties the opportunity to peruse documents may hamper the search for the truth. It will be in the magistrate's discretion whether he allows them to see all the documents or only some, when he allows them to examine the documents, where, and subject to what conditions."

He said that the magistrate's refusal on grounds that a criminal case might follow did not hold water.

The Judge President said that the magistrate, when exercising his discretion, should keep in mind that the interested parties were trying to assist him in finding the cause of the death and the circumstances under which Mr Timol died.

Mr Justice Cillie then said: "The court cannot substitute any decision for that of the magistrate. Even if it was able to, it cannot, as we have no knowledge of the contents of the documents."

After setting aside the ruling of magistrate, the Judge President said: "The inquest into the death of the deceased is to proceed in the light of what has been said in this judgment.

On the Bench were the Judge President of the Transvaal, Mr Justice Cillie, and Mr Justice Marais. Mr I. A. Maisels QC, with him Mr G. Bizos, instructed by M. S. H. Cachalia and M. A. Loonat, appeared for the Timols. Mr W. S. McEwan SC, with him Mr P. J. Schabort, instructed by a deputy State Attorney, appeared for the Chief Magistrate of Johannesburg and for the Attorney General.

ser, said he was satisfied Ngudle had died by hanging; he had found no other