

Case Name:

Regina v. Pacific Meat Company Limited et al.

[1957] B.C.J. No. 98

24 W.W.R. 37

119 C.C.C. 237

27 C.R. 128

BRITISH COLUMBIA COUNTY COURT

Swencisky Co. Ct. J.

Judgment: 1 October 1957

(18 paras.)

Counsel:

A. L. Bewley, for appellants.

W. S. Owen, Q.C., for respondents.

1 SWENCISKY CO. CT. J.--The charge in the above matter was laid, by an officer of the Society for the Prevention of Cruelty to Animals, under s. 387(1)(a) of The Criminal Code, 1953-54, c. 51, which reads as follows:

2 "Every one commits an offence who

3 "(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or bird."

4 The facts briefly are that Pacific Meat Co. operates a slaughter house at which hogs were slaughtered as hereinafter described. Eighteen hogs were driven from an inner holding pen into a shackling pen, where the accused Reno Vencato placed an iron shackle around the lower portion of a hog's hind leg just above the first joint. The shackle had a chain attached to it. The end of the chain farthest from the shackle has a hook which is attached to a vertical hoist which lifts the hog up into the air a height of 15 to 18 feet, where it passes through a metal door equipped with hinges which only swing one way, so that if the hog's leg slips out of the shackle, the hog cannot fall out of the rectangular container and injure the shackler. The hog dangles in the air as it is hoisted and strikes against a metal wall. From the evidence it is not clear whether the hog is rendered unconscious by the impact or not. The witness Hughes states at p. 33 of the transcript,

"the hog was swung against this sheet with some force." The witness Stratton at p. 13 of the transcript, in reply to the question, "when you say it was still struggling, did you mean before it struck the plate or after?" answered, "well, in some cases, both." When the hog would be raised vertically 15 or 18 feet it passed from the rotating drum at right-angles horizontally along a rail, where the accused Robert Peterson (referred to as the "sticker") was standing. The "sticker's" duty is to thrust a sharp knife into the throat of a hog in order to cut the main arteries. Referring to this procedure, the Crown witness Dr. Cook, a veterinarian, at p. 64 of the transcript states, "I don't think there is very much actual pain involved in the sticking process." Questioned at p. 64 of the transcript as to how soon death follows the sticking procedure, this witness stated, "No, death will follow several seconds afterwards."

5 At the close of the Crown's case counsel for the respondents made a motion for dismissal of the charge for the reason that there was no evidence before me on which a jury could find the accused guilty. The motion was fully argued by counsel for the appellant and respondents. I reserved decision to study the transcript of the evidence taken in the lower court which, having been duly authenticated, was by consent of both counsel, read in as the evidence in the hearing before me.

6 In my view decision on the motion depends on the interpretation to be placed on the word "unnecessary." Counsel for the respondents does not submit that there was no pain or suffering or injury involved, but argues that the Crown has failed to adduce any evidence that the pain or suffering was "unnecessary."

7 From the transcript of the evidence taken before the learned magistrate, it is evident that counsel for the respondents very properly objected to many expressions of opinion by Crown witnesses when they were not in a position to give opinion evidence as expert witnesses. By way of example, Crown witnesses endeavoured on numerous occasions to express the opinion that the hogs suffered pain when being shackled, when being hoisted, and when being knocked against the metal wall. Obviously none of such witnesses was in law competent to give opinion evidence as no foundation was laid by the Crown for admission of opinion evidence. Their evidence in such regard must therefore be disregarded by me when I am considering the question as to whether there was any pain or suffering endured by the hogs. If I find that there was pain or suffering, the next question I have to decide is whether the pain, suffering or injury was "unnecessary."

8 Hogs fulfil a purpose of providing food for human beings. Before the hogs can be eaten by mankind they must of necessity be killed, so that the fatal injury that is administered to each hog by the "sticker" is a necessity and therefore not "unnecessary."

9 I next deal with the question of pain and suffering. But for the admission of counsel for the respondents, I would have been inclined to hold that it had not been proven by admissible evidence that the hogs had in fact suffered pain. However, counsel for the respondents acknowledged that there was pain, but argued that the Crown had failed to prove that the pain or suffering was "unnecessary." I must therefore deal with the matter on the basis that pain or suffering has been proven.

10 The evidence for the Crown established the fact that every slaughter house situate in Canada kills hogs by exactly the same procedure as that carried out at the premises of Pacific Meat Co. by the respondents Robert Peterson and Reno Vencato. The evidence for the Crown further established that there were approximately 5,000 slaughter houses in the United States of America and that all but four of them use a procedure identical to that carried out at the premises of the respondent, Pacific Meat Co. Of the four using other methods I would not be able, on the evidence before me, to make a finding that the pain or suffering endured by the hogs was any less than the pain or suffering endured by the hogs killed at the premises of the respondent, Pacific Meat Co.

11 Our Court of Appeal considered the term "unnecessary" in *Rex v. Linder*, 10 C.R. 44, [1950] 1 W.W.R. 1035, 97 C.C.C. 174, 3 Abr. Con. (2nd) 489, and referred approvingly to the decisions in *Ford v. Wiley* (1889), 23 Q.B.D. 203, 58 L.J.M.C. 145, 16 Cox C.C. 683 at 689, where Coleridge C.J. defined the term "unnecessary" as meaning "without necessity." Bird J.A. at p. 46 (C.R.) in his reasons for judgment in *Rex v. Linder* points out:

12 "Hawkins J. at p. 695 said two things must be proved: First, that pain and suffering has been inflicted in fact, and, secondly, without necessity or in other words, without good reason."

13 Upon the motion before me, I am not dealing with the question of whether or not I have any reasonable doubt on the whole of the evidence. I am only dealing with the question of whether there is any evidence before me, or in other words, whether the Crown has made out a *prima facie* case on which a jury could conceivably find the accused or one or more of them guilty.

14 In my view, if someone who was not employed in a slaughter house was to shackle a hog as described in this case, and if such a person hoisted the animal as herein described, just to hear it squeal or for any other sadistic reason, and if evidence was adduced that the hog in fact suffered pain in the process, then I would hold that such pain and suffering was "unnecessary" and that such a person would be guilty. But I am dealing with a case involving two human individuals whose regular employment involves the necessity of slaughtering hogs to provide food for mankind. The crux of the case before me is whether the admitted pain or cruelty was "unnecessary." Crown witnesses described the method of slaughtering hogs in parts of Europe, and as is now being tried out in the four slaughter houses in the U.S.A., to which I referred earlier. It is clear that no matter which method is used, the hog is still alive at the time the "sticker" severs the jugular vein. I am not prepared to hold on the evidence before me that the hogs do not experience pain and suffering when killed by those other processes described by Crown witnesses. Much less am I prepared to hold that the Crown has *prima facie* established that the pain or suffering endured by the hogs in the process of slaughter as described at the premises of the respondent, Pacific Meat Co., constituted "unnecessary" pain or suffering.

15 As far as the respondent Peterson is concerned, it is my view that the evidence of the Crown witness Doctor Cook definitely negatives any suggestion of guilt on his part.

16 As far as the respondents Vencato and Pacific Meat Co. are concerned, it is my view that the evidence for the Crown fails to establish a *prima facie* case that the pain or suffering was "unnecessary."

17 The motion must therefore be allowed and the charge against all three respondents dismissed.

18 I have perused the reasons for judgment of the learned magistrate and I am in accord with his reasoning and conclusions.