

Saskatchewan Court of Appeal

Citation: R. v. Mangels

Date: 1979-03-27

Docket: 8101

Between:

R.

and

Mangels

Culliton, C.J.S., Woods and Bayda, JJ.A.

Counsel:

D. Murray Brown, for the appellant;

A. Kapoor, for the respondent.

[1] Culliton, C.J.S.: Doug Mangels was charged in an information that he, on or about April 13th, 1978, at Carrot River District, Saskatchewan, being the owner of a domestic animal, to wit: cattle, did wilfully neglect to provide suitable and adequate food and shelter for such cattle, contrary to Section 402(1)(c) of the *Criminal Code*.

[2] When the matter came before Judge Parker of the Magistrates' Court, an objection was taken to the information on the ground that the same was duplicitous. Judge Parker did not agree with that objection but granted an adjournment to enable counsel for the accused to take such steps as he deemed necessary to resolve the question.

[3] An application was made by way of *certiorari* for an order to quash the information on the ground that the information was duplicitous and therefore a nullity. The application was heard by MacDonald, J., who held the information to be duplicitous and quashed the same. From this judgment the Crown has appealed.

[4] On the appeal learned counsel for the respondent took a preliminary objection. He contended that the notice of appeal had not been served within fifteen days as provided in Court of Appeal Rule 43. It is true there had been non-compliance with that rule. Judgment was rendered on October 20, 1978, and the notice of appeal was served on November 17, 1978. As the respondent was in no way prejudiced by the breach of Rule 43, the time for service of the notice of appeal is extended pursuant to Court of Appeal Rule 7, so as to validate these appeal proceedings.

[5] Section 402(1)(c) of the *Criminal Code* reads as follows:

402.(1) Every one commits an offence who

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(c) being the owner or the person having the custody or control of a domestic animal or bird or an animal or bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it,

[6] I do not need to decide whether the words “wilfully neglects or fails” contemplate two offences - one of neglect and one of failure. I am satisfied however, that where the charge, as here, is one that the accused did wilfully neglect to provide suitable and adequate food and shelter for cattle, of which he was the owner, the essence of the offence is “wilfully neglect” which may be brought about in different ways, namely, by wilfully neglecting to provide suitable and adequate food or shelter. The information is therefore not duplicitous. It merely charges the one offence of wilful neglect of cattle that may be committed in a number of ways. *R. v. Brunei*, [1968] S.C.R. 713.

[7] The appeal is allowed and the order of the learned trial judge quashing the information is set aside.

Appeal allowed.