1910 CarswellPEI 19
Prince Edward Island Court of Appeal

R. v. Cook

1910 CarswellPEI 19, 16 C.C.C. 234

The King v. Annie Cook

Sullivan, C.J., Hodgson, J. and Fitzgerald, J.

Judgment: January 11, 1910
Docket: None given.

Counsel: J.A. Mathieson, K.C., for applicant

Subject: Criminal
Related Abridgment Classifications
Criminal law
XXII Sentencing procedure and principles
XXII.8 Types of sentence
XXII.8.b Compensation order
Criminal law
XXIII Sentencing by offence
XXIII.12 Wilful and forbidden acts in respect of certain property
XXIII.12.b Cruelty to animals
Personal property
I Animals
I.1 Injury to animals
I.1.d Malicious injury
Headnote
Criminal law

***Fitzgerald, J.*:**

1 The applicant in this case was on the 9th day of September last, 1909, convicted before two justices for the unlawful and wilful killing of a dog, the property of Peter G. Ross, and the conviction adjudges "the said Annie Cook for her offence to forfeit and pay the sum of $1 fine and $20 damages for the loss of the dog, to be paid and applied according to law, and also to pay to the said Peter G. Ross the sum of $4 for his costs, etc."; and the minute of judgment made by the magistrates at the time shews that they fixed the fine at $1 and "awarded Peter G. Ross the sum of $20 for the loss of his dog."

2 It is contended that under Sec. 537 of the Criminal Code the Magistrate erred in making this conviction, as that section gives them no power to award damages to the complainant for the injury done.

3 There is no doubt that that section contains no such power. The injury done the complainant is expressly reserved to him as I read the section, not to be considered or adjudicated on by the Court trying the criminal offence. The complainant's personal injury must be the subject of civil proceedings; what penalty is coming to the Crown by reason of a criminal offence is all that the Magistrates under that section have to determine.

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4 If the offence could come under sec. 539 the case would be entirely different, but it clearly cannot, as that section includes within its provisions only such injuries to property for which no punishment is otherwise provided by the Code, and punishment for killing a dog is explicitly provided for by sec. 537.

5 This conviction is consequently bad so far as it contains any adjudication upon the "injury done."

6 The new conviction put in, in substitution of the one referred to, reads: — "We adjudge the said Annie Cook for her said offence to forfeit and pay the sum of $21 to be paid" etc., with costs the same as in the original.

7 This conviction cannot stand for the simple reason that it is not the adjudication of the magistrates. They, by their first conviction and their minutes of it, shew that they fixed the fine or penalty at $1, and $20 dollars to the complainant for the loss of his dog. There was in fact no adjudication imposing a penalty to the Crown of $21, and no formal written conviction can make that a fact which never was one.

8 It was suggested on the argument that our local statute, 44 Vict. ch. 1, was in some way a bar to the conviction, as it empowers the killing of dogs under certain circumstances.

9 That statute no doubt was available to the defendant on the trial of his case before the magistrates. We know not whether he ought to excuse his act under its provisions — or deeming them not serviceable to him in his defence refrained from quoting them. It is, however, quite plain that its provisions are in no sense a bar to punishment for an offence against the Criminal Code, though they may be pleaded in justification or excuse.

10 Under sec. 1124 of the Code full power of correcting any irregularity in a conviction of this character is given to this Court, even if the punishment imposed in it is in excess of that which might lawfully have been imposed. Upon a perusal of the depositions before us, this is a case, in our opinion, in which the Court should rectify the error of the magistrates, and not quash the conviction wholly.

11 The order will therefore be for the rectification and amendment of this conviction by striking out thereof the following words — "and twenty dollars damages for the loss of the dog." Otherwise the conviction to stand, and be enforced by the magistrates.

12 There should be no costs given to any party before the Court on this certiorari, neither party having succeeded materially. The rule for a certiorari will be dismissed without costs.

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