

## **R v Dudley and Stephens (1884) 14 QBD 273**

### Chapter 4

#### *Relevant facts*

In 1884, the yacht the *Mignonette* was being sailed from England to Sydney Australia to be delivered to its new owner. The ship was crewed by Captain Thomas Dudley, Edward Stephens, Edmund Brooks, and Richard Parker the cabin boy. On 5 July 1884, the crew were forced to abandon their ship and take to a life raft during a storm approximately 2,600 kilometres off the Cape of Good Hope. They had no water and only two tins of turnips for food. They managed to supplement the turnips by catching a turtle on 9 July and they also captured some rain water but otherwise had little success in acquiring further provisions.

On 23 July, when they had been without food for seven days and water for five, Dudley proposed to Stephens and Brooks that they cast lots to determine who should be put to death to save the rest. Brooks refused to participate. The suggestion was raised again on 24 July but Brooks again objected. On 25 July, Dudley put a knife into the throat of Parker who was lying helpless on the bottom of the boat. Stephens stood by to hold the boy's legs if he struggled but he did not resist. Stephens, Dudley and Brooks fed upon the corpse.

On 29 July, the castaways were rescued by a passing ship and returned safely to England. They were all charged with murder but the charges against Brooks were later dropped.

#### *Legal issue*

Was necessity a defence to a charge of murder?

#### *Decision*

On 9 December 1884, the Queen's Bench Divisional Court decided that Dudley and Stephens had committed murder because necessity was not a defence to a charge of murder in any circumstances. In reaching their decision, the Court accepted that Dudley and Stephens were subjected to sufferings 'which might break down the bodily power of the strongest man' and that they were unlikely to have survived if they had not fed on the body of Parker. Nevertheless, they had committed murder and should be punished.

According to Lord Chief Justice Coleridge in his judgement on behalf of the Court:

But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the

same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it.

*Further:*

It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principles leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting, was chosen.

*Significance*

This decision is authority that necessity is no defence to a charge of murder at law even where the murder was committed to enable the survival of others