

IN THE MATTER OF THE PETITION OF  
 RIGHT OF GEORGE B. ALDER- } SUPPLIANT;  
 SON..... }  
 .....

1922  
 May 18.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Evidence—Onus of proof—Animal Contagious Diseases Act and Regulations thereunder.*

A. applied for and obtained, under the provisions of sec. 88½ of the Regulations passed under the authority of the Animal Contagious Diseases Act, a license to feed to his hogs garbage obtained from outside, which license contained the following: "In consideration of the granting of a license to me I hereby agree . . . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera unless it can be shown that the infection came from some other source than garbage feeding."

*Held:* That the onus of proving that the cholera in question came from some other source than the garbage feeding was upon the suppliant.

PETITION OF RIGHT seeking to recover \$7,482.00, value of a number of hogs slaughtered by officers of the Department of Agriculture, under the Animal Contagious Diseases Act.

May 3rd and 4th, 1922.

Case now heard before the Honourable Mr. Justice Audette at Toronto.

*I. F. Hellmuth, K.C., and J. G. Gibson, K.C., for suppliant.*

*MacGregor Young, K.C., for respondent.*

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The facts are stated in the reasons for judgment.

AUDETTE J. now (this 18th May, 1922) delivered judgment.

The suppliant, by his petition of right, seeks to recover the sum of \$7,482.00 representing, as alleged, the value of 212 hogs slaughtered, without justification, as suffering from hog cholera, by officers of the Department of Agriculture of the Dominion of Canada, under the provisions of the Animal Contagious Diseases Act.

The respondent, by the statement in defence, avers, among other things, that the hogs were rightfully slaughtered in accordance with the Act and that by the terms of his license to feed garbage the suppliant forfeited all claim to compensation.

The evidence adduced on behalf of the suppliant and the respondent as to whether or not the hogs in question were affected by cholera is absolutely conflicting and directly opposed the one to the other. All of the suppliant's evidence shows that the hogs were in perfect health and all of the respondent's evidence shows that some of them were actually affected or had been in contact with or in close proximity to hogs affected by hog cholera.

In weighing contradictory evidence, one must add to or take from such evidence according to the surrounding circumstances, probabilities and improbabilities of the case.

According to the suppliant's evidence the hogs were in perfect health, were taking their food and showed no sign of illness or disease at the time of their destruction.

According to the respondent's evidence, four duly qualified and graduated veterinary doctors of very large experience and well versed in the diagnosis of hog cholera found the suppliant's piggery infected with the disease.

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Is it possible to reconcile this conflicting evidence?

While I do not charge dishonesty in the suppliant's evidence, I cannot overlook the fact that it is the evidence of interested parties—that is the evidence of the owners of the pigs, his son, the manager of the piggery, and the two employees and that the evidence adduced on behalf of the Crown is by parties personally disinterested.

The failure to detect the symptoms of cholera on the part of the suppliant, may have been the result of want of observation and more especially the want of knowledge possessed by men skilled in the art of diagnosing a disease, or of the ability to find even the apparent and exterior indicia of the same, by ante-mortem examination, which in this case was afterwards confirmed by post-mortem observation.

On the morning of the 19th April, 1920, while in course of an inspection with Dr. Tennent, lay-inspector Baker noticed and called Alderson's (jr.) attention to a sickly pig in pen No. 12, which Alderson in his testimony described as a sickly pig, not smart, a cull. The temperature of the pig was then taken and it showed 105 3-5.

On the afternoon of the same day Dr. Hall—while Doctor Richards, Monaghan and Tennent were present—made a post-mortem examination of that pig which revealed the clear evidence of hog cholera.

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On arriving at the piggery, Dr. Hall was shewn a hog—a shoat—which he found down and unable to rise, It showed discoloration of a portion of the hip up to the abdomen, snuffing of the nose, general prostration,—all of these ante mortem clinical symptoms indicating hog cholera.

Dr. Hall added that there was infection distributed all through the pens and that the hogs were showing clinical manifestation of the disease.

Dr. Hall in both his ante-mortem and post-mortem examinations is confirmed by the three other doctors. In face of such evidence I feel I must accept the finding of the men of the art in preference to the evidence of the suppliant.

Under the circumstances 212 of the hogs were ordered to be slaughtered.

Under the provisions of Regulation No. 6, made under the authority of secs. 28, 29, 30 et seq. of the Act, it is provided that: "6. Hogs affected with hog cholera or swine plague, or which have been in contact with or in close proximity to hogs affected with hog cholera or swine plague, shall . . . be forthwith slaughtered."

I therefore find that the hogs in question were rightly slaughtered according to law and the killing of the same was duly justifiable.

This suppliant wishing to feed garbage to his hogs, under the provisions of sec. 88 $\frac{3}{4}$  of the Regulations, made application for a license to do so as is shewn by exhibit No. 2 and obtained the license which is filed as exhibit No. 1. This application contains the following condition:

"In consideration of the granting of a license to me, I hereby agree (1) to maintain my hogs in a clean, sanitary condition; (2) to sell no hogs except for

immediate slaughter; (3) to notify the veterinary inspector if sickness appears among my hogs, and (4) to forfeit all claim to compensation in case it is necessary to destroy any of my hogs, as a result of hog cholera unless it can be shown that the infection came from some other source than garbage feeding."

There is not a tittle of evidence on the record — one way or the other—to show whether or not the infection in question in this case came from some other source than garbage feeding. The onus was upon the suppliant and he has not discharged it.

Therefore, it is with regret I have come to the conclusion that the suppliant is not entitled to any compensation for the hogs so slaughtered. The Court has no other course to follow than the one dictated by law—if any benevolence is to be shewn the suppliant, it is for the officers of the Crown to consider and apply it.

In the view I take of the case it becomes unnecessary or useless to advert to the question of salvage and other minor questions raised at trial.

There will be judgment declaring that the suppliant is not entitled to any portion of the relief sought by his petition of right.

*Judgment accordingly.*

*Gibson & Gibson*, solicitors for suppliant.

*McGregor Young*, solicitor for respondent.

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