

Intro to Law
Unit One Reading Assignment
“The Case of the Shipwrecked Sailors”

Introduction

The Queen v Dudley and Stephens [1884] is a leading English criminal case which established a precedent, throughout the common law world, that necessity is no defense to a charge of murder. It concerned “survival cannibalism” following a shipwreck and its purported justification on the basis of a Custom of the Sea. It marked the culmination of a long history of attempts by the law, in the face of public opinion sympathetic to castaways, to outlaw the custom and it became something of a *cause célèbre* in Victorian Britain.

The Facts

The English yacht *Mignonette* had been purchased as a leisure vessel by an Australian lawyer and was to be transported to Australia by sailing her there. She finally set sail for Sydney from Southampton on 19 May 1884 with a crew of four: Tom Dudley, the captain; Edwin Stephens; Edmund Brooks; and Richard Parker, the cabin boy. Parker was 17 years old and an inexperienced seaman.

On 5 July, the yacht was sailing through a storm approximately 1,600 miles northwest of the Cape of Good Hope. Though the weather was by no means extreme and the vessel was not in any difficulties, a rogue wave struck the vessel and the yacht capsized. Dudley instantly realized that the yacht was doomed and ordered the single 13-foot lifeboat to be lowered. The *Mignonette* sank within five minutes of being struck and the crew abandoned ship for the lifeboat, managing only to salvage vital navigational instruments along with two tins of turnips and no fresh water.

Dudley managed to improvise a sea anchor to keep the lifeboat headed into the waves and maintain her stability. Over the first night, the crew had to fight off a shark with their oars. They were about 700 miles from the nearest land, being either St. Helena or Tristan de Cunha. Dudley kept the first tin of turnips until 7 July when its five pieces were shared among the men to last two days. On or around 9 July, Brooks spotted a turtle which Stephens dragged on board. The crew was resolutely avoiding drinking seawater as it was then universally held to be fatal and, though they devoured the turtle, they were unable to drink its blood when it became contaminated with seawater. The turtle yielded about three pounds of meat each, though the crew ate even the bones, and, along with the second tin of turnips lasted until 15 or 17 July. The crew consistently failed to catch any rainwater and by 13 July, with no other source of fluid, they began to drink their own urine. It was probably on 20 July that Parker became ill from drinking seawater.

Drawing lots (splinters) in order to choose a sacrificial victim who would die to feed the others was possibly first discussed on 16 or 17 July, and debate seems to have intensified on 21 July but without resolution. On 23 or 24 July, with Parker probably in a coma, Dudley told the others that it was better that one of them die so that the others survive and that they should draw lots. Brooks refused. That night, Dudley again raised the matter with Stephens pointing out that Parker was probably dying and that he and Stephens had wives and families. They agreed to leave the matter until the morning.

The following day, with no prospect of rescue in sight, Dudley and Stephens silently signaled to each other that Parker would be killed. Killing Parker before his natural death would better preserve his blood to drink. Brooks, who had not been party to the earlier discussion, claimed to have signaled neither assent nor protest. Dudley always insisted that Brooks had assented. Dudley said a prayer and, with Stephens standing by to hold the youth's legs if he struggled, pushed his penknife into Parker's jugular vein, killing him.

In some of the varying and confused later accounts of the killing, Parker murmured, "What me?" as he was slain. The three fed on Parker's body, with Dudley and Brooks consuming the most and Stephens very little. The crew even finally managed to catch some rainwater. Dudley later described the scene, "I can assure you I shall never forget the sight of my two unfortunate companions over that ghastly meal we all was like mad wolves who should get the most and for men fathers of children to commit such a deed we could not have our right reason." The crew sighted a sail on 29 July.

Dudley, Stephens and Brooks were picked up by the German ship *Montezuma*, which returned the men to Falmouth, Cornwall on Saturday 6 September *en route* to its destination in Hamburg. On arrival in Falmouth, the survivors attended the customs house and Dudley and Stephens entered statutory statements under the Merchant Shipping Acts, required in the event of a shipping loss. All three were candid, Dudley and Stephens believing themselves to be protected by a Custom of the Sea.

Customs officer and Sergeant of the Harbor Police James Laverty was in the vicinity of the depositions and later questioned Dudley about the means by which he had killed Parker, taking custody of the knife and promising to return it. The depositions were telegraphed to the Board of Trade and to the registrar general of shipping in London. While the survivors were making arrangements to rejoin their families, the registrar general advised that the men should be detained in Falmouth. The Board of Trade gave conflicting advice to take no action but informed the Home Office. The Home Office was closed for the weekend. Meanwhile, Laverty was seeking warrants for the men's arrest for murder on the high seas, warrants he obtained later that day from the mayor.

The three men were held in the borough police station until they could appear before the magistrates on the morning of Monday, 8 September. Dudley appears to have been confident that the magistrates would dismiss the charges, but all magistrates had recently been instructed to seek advice of the Treasury Solicitor in all murder cases and the clerk probably prompted Laverty to ask for a remand in custody and adjournment while advice was sought. Local defense attorney Harry Tilly appeared for the men and requested bail but after the magistrates consulted, they were returned to the police cells until 11 September.

The Law

Any person who deliberately takes the life of another is guilty of murder.

The defendants were granted bail and no charges were filed against Brooks. The trial of Dudley and Stephens began on 3 November...they were found guilty and sentenced to the statutory death penalty with a recommendation for mercy.