



Canada

PROVINCE OF BRITISH COLUMBIA

In the Provincial Court of British Columbia

(BEFORE HIS HONOUR JUDGE G. O. STEWART )

McBRIDE, B. C.

21 OCTOBER 1983

R E G I N A

V

GREGORY MUTCH

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PROCEEDINGS AT

JUDGMENT

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APPEARANCES:

K. HOUGH,  
D. BYL,

appearing for the Crown  
appearing for the Accused

1 THE COURT: Well, 'willful' is the key word to it. I think that  
2 has to be emphasized, and underlined several times, so  
3 there's no mistake about what we're talking about.  
4 Ordinarily, in criminal charges, you are charged with did  
5 take an automobile, you know, did steal. Doesn't say  
6 'willfully' steal. There's only a few charges in our  
7 Criminal Code where it's necessary to allege 'wilfull',  
8 and in fact it is alleged 'wilfull'. That's a very strong  
9 word. To me, without looking up the definition in a  
10 dictionary or Code, it means full of ill will. It denotes  
11 to me malice, what the lawyers call mens rea, but a  
12 strong dose thereof. Mens rea is one of those dumb little  
13 phrases that lawyers use, but I like it because I'm used  
14 to it. What it means is guilty mind. Now, you can  
15 achieve a guilty mind, it's true, I suppose by being  
16 reckless as to the consequences of your act. A person  
17 knew, or ought to have known, but it has to be pretty  
18 extreme. There's several straws in the wind here, and  
19 some of them are not straws. You know, it's very  
20 difficult to say about this accused that he has malice  
21 when he doesn't take any whips along, he doesn't take any  
22 spurs along, he takes grain along, he takes utensils for  
23 the horses, he takes medicine for the horses. He may be  
24 mistaken as to how much he should take. He may have been  
25 mistaken as to what he might need, but malice is pretty  
26 hard to read into that. Dr. Saunders characterizes him  
27 as a greenhorn. I suppose he said that in a fit of pique



1 in a way, so disappointed when he saw the condition of  
2 these horses that he threw that word out, because it's a  
3 strong word. It's a pretty derogatory expression to use  
4 about anybody in whatever field of human knowledge they're  
5 called upon maybe to exercise from time to time in this  
6 short life. But, that's the word he used, and I guess  
7 what we're saying is Dr. Saunders is thinking him an  
8 ignorant person. Well, of course, he's not totally  
9 ignorant, of course, he isn't. But, he certainly hasn't  
10 got the expertize that other people in this room that  
11 have given evidence have. He certainly has maybe more --  
12 a lot more knowledge than I, but that's begging the  
13 question.

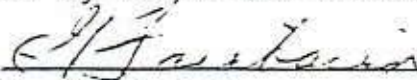
14 You know, Miss Warren, you can't help but be impressed  
15 with the lady. She said she thought that Francis was  
16 capable of a pack trip, and then says that she was wrong.  
17 Now, it would be a foggy Friday in this Courtroom if  
18 Miss Warren had taken that horse and would be convicted of  
19 a criminal offence that's alleged as 'wilfull'. And I  
20 think Miss Warren is probably more knowledgeable than  
21 this accused.

22 You see, I don't only have to find that it's 'wilfull',  
23 or maybe I should rephrase that; I don't have to find it  
24 wilfull, I have to have a reasonable doubt about it, that's  
25 all I have to do. This is a criminal Court, not a civil  
26 one. We're not dealing here with a balance of  
27 probabilities or what Mr. Mutch should have done. I have

1 to find beyond a reasonable doubt to find him guilty that  
2 he 'wilfully' caused unnecessary pain and suffering to an  
3 animal. I can't do that. I can't bring myself to do it.  
4 Mr. Mutch has to understand, though, that I'm not  
5 exonerating him in any moral sense, and I'm not holding  
6 that he wasn't in some way blameworthy. I think Mr. Mutch  
7 is probably negligent and lacking in proper standards of  
8 knowledge. I think that was patently -- came across quite  
9 patent in his evidence. It's obvious to me that he has  
10 his limitations, and what I find rewarding, though, is  
11 that he now knows his limitations. He didn't come into  
12 this Courtroom saying I was right and I did what was  
13 right, and everybody else is a nut. Most of the evidence  
14 given in this Courtroom I accept, and he, you know, made  
15 errors. But, a criminal charge has not been brought home  
16 to him, certainly not in that word 'wilfull', which I have  
17 to keep coming back to. I don't find he was of that  
18 state of mind, and he's found not guilty.

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22 I hereby certify the foregoing  
23 to be a true and accurate transcript  
24 of the proceedings recorded by  
25 M. Downie, transcribed to the best  
26 of my skill and ability.

27 

G. Fairbairn,  
A duly sworn Court Recorder