

ANNOTATION ON ABOVE CASE FROM D.L.R.

It is well settled that a master or principal may, *under certain circumstances*, be held liable criminally for an act committed by the hand of his servant or agent acting either under his direct authority or with his knowledge or consent or without such authority or knowledge or even in disobedience of orders. *R. v. Holbrook* (1877), L.R. 3 Q.B.D. 60, 13 Cox C.C. 650; Labatt on Master and Servant, sec. 2565. As to criminal acts declared to be offences under the Criminal Code the master will be liable as a participant if he aids or abets the servant in the commission of the offence. Cr. Code 1906, sec. 69.

In most instances, where the master is held to be responsible criminally for the wrongful conduct of his servant, it is on the theory that the act complained of is positively forbidden and therefore guilty intention is not essential to the conviction. In some cases the statute expressly makes the master responsible for the act of his servant. *Reg. v. King*, 20 U.C.C.P. 246.

The owner of works carried on for his benefit by his agents may be indicted for a nuisance caused by the obstructing of the navigation of a river by his agents casting rubbish in it without his knowledge and contrary to his general orders. *Reg. v. Stephens* (1866), L.R. 1 Q.B. 702. The fact that the directors of a company are ignorant that a nuisance is being created by the conduct of its business will not absolve it from liability although they have given a manager authority to carry it on and although his method is a departure from the directors' original plan and results in the nuisance. *Rex v. Medley* (1834), 6 C. & P. 292.

A master is not criminally liable for "knowingly" allowing liquor to be sold to a girl under fourteen years of age where the sale was made knowingly by the master's bartender but against the orders of the master and without his knowledge, actual or constructive, or the wilful connivance of his foreman who was present. *Conlon v. Muldowney*, [1904] 2 Irish R. 498. So, the word "knowingly" in sec. 207 of the Criminal Code Can. 1906, dealing with the unlawful sale or possession for sale of immoral literature, makes it incumbent on the prosecution to give some evidence to prove knowledge of the contents of the book on the part of the accused. *R. v. Beaver*, 9 Can. Cr. Cas. 415, 9 O.L.R. 418 (and see amendments of sec. 207, passed in 1909 and 1913 respectively). See also *R. v. Macdonald*, 15 Can. Cr. Cas. 482, 39 N.B.R. 388; *R. v. Graf*, 15 Can. Cr. Cas. 193, 19 O.L.R. 238; *R. v. Britnell*, 20 Can. Cr. Cas. 85, 4 D.L.R. 56.

A person charged with "suffering" a nuisance to arise under a Health Act must be shewn to have knowledge for which he is legally answerable of the nature of the act and of its consequences, before he can be found guilty of an offence; but the knowledge of a servant employed to do an act, and from whose act the nuisance necessarily and immediately arises, is, for the purposes of such case, the knowledge of the master who directs the act to be done. *Mowling v. Justices*, 17 Vict. L.R. 150.

In *Mullin v. Collins* (1874), L.R. 9 Q.B. 292, the defendant was prosecuted because his servant supplied a constable on duty with drink. It was held to be no defence on his part that his servant had done this without his