

"Whatever may have been the negligence of the deceased, I am clearly of opinion that the prisoners would not be thereby exonerated from the consequences of their own illegal acts, which would be traced to their negligent conduct, if any such existed. . . . There is a very wide distinction between a civil action for pecuniary compensation for . . . negligence, and a proceedings by way of indictment for manslaughter. There is no balance of blame in charges of felony, but wherever it appears that death has been occasioned by the illegal act of another, that other is guilty of manslaughter . . . though it may be that he ought not to be severely punished."

In a criminal case the question for the jury is said to be whether or not the negligence of the defendant was a *material cause* of the deceased's death; and if so, the accused person would be guilty of manslaughter, however negligent the deceased may himself have been, (82 J.P. 243). It has been suggested that the criminal law has thus adopted a rule analogous to that of the Admiralty Court in ship collision cases, which holds that where both parties are to blame each shall bear a share of the resulting damage to one or to both. (82 J.P. 243.)

But in a review of the law of Homicide on Highways (82 J.P. 133), it is affirmed that generally speaking, whether in the case of negligent driving or in the case of any other illegal act which directly causes an injury to another, the defence of contributory negligence is open to the defendant whether in civil or criminal proceedings; but that the contributory negligence on the part of the injured person, or of the deceased, must be negligence at the final moment of the accident such that but for it no injury would have resulted. See *Regina v. Dalloway* (1847), 2 Cox C.C. 273; *Regina v. Murray* (1852), 5 Cox C.C. 509; *Rea v. Martin* (1834), 6 C. & P. 396; *Rea v. Grout* (1834), 6 C. & P. 629; *Rea v. Timmins* (1836), 7 C. & P. 499; *Rea v. Walker* (1824), 1 C. & P. 320. But the qualification as so stated lacks precision on the question of proximate cause as distinguished from mere contributory negligence in its technical meaning as applied in civil actions for tort.

The trend of judicial opinion in England as indicated by the summings-up in criminal prosecutions seems now to have largely ameliorated the strictness of the rules of criminal responsibility laid down in the older cases, so that the unintentional killing of another in the course of an unlawful act will not justify a conviction for manslaughter unless the unlawful act has about it some element of grossness or perversity. (82 J.P. 133, *Regina v. Serné* (1887), 16 Cox C.C. 311.) If a motorist breaks a local by-law or ordinance and accidentally kills another person during the continuance of such breach of the law, two questions would have to be considered, the first, whether the death was the actual result of the breach and would not have followed but for it (see *Regina v. Dalloway*, 2 Cox C.C. 273); and the second, whether any element of recklessness or gross negligence is involved in such breach. Only in case of both of these questions being determined adversely to the accused, would a conviction for manslaughter be supported in present-day jurisprudence. If the breach