

Some one or more officers of the corporation may also be liable upon a criminal charge arising out of the same occurrence in respect of the officer's personal misfeasance or malfeasance. In *Rex v. Michigan Central Ry.* (1907), 17 Can. Cr. Cas. 483, in which the railway company had been indicted for a nuisance under the Revised Cr. Code sec. 221, in carrying dynamite without proper precautions whereby fatalities resulted and for criminal neglect under sec. 247 whereby human life was endangered, Mr. Justice Riddell said in delivering judgment after a plea of guilty: "If it were the fact that the board of directors or the general manager of the defendants' company, or anyone responsible, directly or indirectly, for the system carried on in the transportation of explosives, resided within the jurisdiction of this Court, I should have recommended their being indicted as well as the company. It is right and just that employees of whatever grade shall be placed upon trial when any negligence of theirs caused wounds or death, and the higher officers through whom a defective system is put on or kept in operation should not escape."

See also *Ex parte Brydges* (1874), 18 L.C. Jur. 141.

By Code, sec. 284 it is declared an indictable offence for anyone, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, to cause grievous bodily injury to any other person. The effect of the interpretation clauses of the Code is to include a corporation within the term "every one" and as to a corporation to substitute the word "its" for "his" in the phrase "which it is his duty to do." Cr. Code sec. 2; *Union Colliery Co. v. The Queen* (1900), 4 Can. Cr. Cas. 400, 31 Can. S.C.R. 81.

The principal case of *R. v. Yarmouth Light & Power Co.* (1920), *ante*, p. 1, appears to be the first decision under the Canadian Criminal Code in which the question of contributory negligence has been raised as a defence to criminal negligence.

In a criminal prosecution for causing death by negligence, the general proposition seems to be established that it is no defence to prove that the deceased was guilty of such contributory negligence as would have disentitled him to claim damages in tort. *Regina v. Longbottom* (1849), 3 Cox C.C. 439; *Rex v. Walker* (1824), 1 C. & P. 320; *Regina v. Kew* (1872), 12 Cox C.C. 355.

But it is said that, like all legal principles, it must be applied with some discretion and the exercise of common sense; and that probably wherever there is a great disparity between the negligence of the accused and that of the deceased, and when the negligence of the former is very trivial and that of the latter very grave and obstinate, a jury would not hesitate to find a verdict of acquittal. See article on Contributory Negligence on Highways (1918), 82 J.P. 243.

In *Regina v. Longbottom*, 3 Cox C.C. 439, the case was that of a deaf man who persisted in walking in the middle of a busy highway at night time, manifestly a very negligent act for a deaf man. He was ridden over and killed by a cart driven by the prisoners, who were more or less intoxicated. Baron Rolfe said at p. 440: