Neill an Independent

Ex-Member For Alberni Disapproves of Portion of Government Policy.

Arthur Peatt Nominated for Esquimalt--Ralph Smith to Organize Labor Vote.

Our Alberni correspondent writes: "The meeting called by Mr. Neill took place in Huff's hall on Saturday evening last. There was a good attendance. Mr. Halfpenny was voted into the chair. Mr. Neill announced that he should run as an Independent Liberal. He said he was not personally in favor of party lines, as he had said at a former meeting; but, if the Liberal part of the province decided to fight on party lines, then he would join them sooner than see the Liberal party break up. Mr. Neill considered that the convention held at Vancouver last month had decided against party lines. He then proceeded to lay his platform before the meeting, remarking that he agreed with nearly all Mr. Martin's planks, but three in particular he could not agree to: The abolition of $200 deposit for candidates, the government ownership of railways, plank 12 of Martin's platform re the paying of tolls or charging the making of new roads on those directly interested in them.

"As to the Redistribution Bill, he considered that the size area, population and occupations of the people, should be taken into account; also that a district which had a very scattered population, engaged in many different pursuits, needed more representation than a place of larger population perhaps, but compact in size and with its people engaged in the same pursuits.

"Referring to the Chinese question, he said that in 1898 he favored greater restriction on the Chinese, and that they should not work underground or on government contracts. Mr. Neill approved of Mr. Martin's determination to fight the Dominion on this question, and also, if necessary, to send a representative to England to lay the case before the Imperial parliament.

"Another suggestion made by Mr. Neill was that Chinese laborers should be paid the full wages of a white man, and he though this would help to check the inflow of Chinese. Another proposal he made was to tax those who employed Chinese servants, as is done in England where anyone keeping a male servant has to pay so much a year. This would be a great addition to the revenues of the province.

"On the eight-sour bill, he would always vote for it, on government contracts and for everything, and hoped that eventually it will be made into a legal working day for all, though not a compulsory one.

"Mr. Neill approved entirely of the principle of government ownership of railways, but objected to its application now and here."

One of the arrivals by the noon train from Nanaimo to-day was W. W. B. McInnes, independent candidate in North Nanaimo. He was met by his brother, T. R. E. McInnes, and went directly to Government House.

The members of the Victoria Liberal Association are requested to take notice that the adjourned annual meeting on Friday evening next will be held in the A.O.U.W. Hall Yates street. As the attendance is expected to be unusually large it was thought desirable to secure a hall that will accommodate the members, Philharmonic Hall being otherwise occupied.

Last evening Colwood school house was a scene of political excitement. The electors and farmers of that portion of Esquimalt district meet in convention to select a candidate to represent them in the local legislature. John Jardine occupied the chair in an able manner and placed before the convention political issues of the present time. Arthur Peatt, of Colwood, the well-known farmer, was the unanimous choice of the convention. Mr. Peatt then was called upon for a speech, and after thanking those present for the honor conferred on him, he discussed the political issues and referred particularly to the government platform, and stated that he was willing to support it and any other measures that would be in the interest of the province. Mr. Beheanson and W. J. Wales, J.P., and Donald Fraser, the other candidate in the field, and Mr. Atkins, also addressed the meeting, insisting on the importance of burying the past and dealing with the live political issues of the day. The meeting concluded with a vote of thanks to the chairman and the singing of the National Anthem. Arrangements are now being made for the Hon. Joseph Martin to address the electors on his return from the Mainland.

Telegraphing from Nanaimo the Times correspondent says: "Ralph Smith left for Alberni this afternoon. Before departing he informed your correspondent that his mission now would be to bring out independent labor candidates pledged to support the platform adopted at South Nanaimo on Saturday evening, wherever possible. He intended to use his position as labor leader to the best of his ability to accomplish his ends."

B. C. ORPHANAGE.

First Meeting of the Lady's Board Held Yesterday.

The board of lady managers of the B. C. Protestant Orphanage was held yesterday at the Home, Hillside avenue.

The following ladies were present: Mrs. W. F. McCulloch, Mrs. C. Hayward, Mrs. W. Munsie, Mrs. P. C. McGregor, Mrs. Wm. Denny, Mrs. G. L. Milne, Mrs. E. Crow-Baker, Mrs. W. R. Higgins, Mrs. Oates, Mrs. Andrews, Mrs. A. S. Going, Mrs. J. Hutcheson, Mrs. Wm. Berridge and Miss Carr.

The election of officers was deferred until the regular meeting in June.

Mrs. Denny and Mrs. Munsie were appointed a special visiting and purchasing committee for May.

The following donations for April were acknowledged by the matron:

Mrs. J. D. Pemberton, clothing and papers; Mrs. Cogan (Sooke road), three sacks of potatoes, sack of onions, sack of apples and 5 dozen eggs; Evangelical Society (Metchosin) per Mrs. Helgeson, 18 blouses, 5 shirts, 3 dresses, 2 skirts, 1 apron and 10½ dozen eggs (5 dozen were colored for Easter); Grand Jury, $13.05 cash; Mrs. W. Ralph Higgins, 5 dozen hot-cross buns; Mrs. H. Clay, 2 dozen hot-cross buns; April 12, 1900, $5 cash for the children; Miss Chase Going, hot-cross buns; Misses Etheldred and Edythe McIlhinny, hot-cross buns; Mrs. R. E. Knowles, large basket of buns, also milk daily; Boys' Brotherhood Club, cakes, sandwiches and oranges; Mrs. T. Earle, wools for fancy work, clothing and 5 dozen eggs; Mrs. T. Walker, clothing and eggs; Mr. Glendinning, 4 sacks potatoes; Mrs. Wm. H. Curtis (Ladner), box of clothing; Mrs. W. J. Smith, clothing; Mrs. Creech, trimmed hat; Ladies' Auxiliary Jubilee Hospital, cakes, bread and oranges; Sons & Daughters of St. George, cakes, bread and meat; a friend, clothing; Mrs. Munsie, clothing and tablecloth; Messrs. Davidge & Co., 21 sheets, 17 pillowslips, 9 towels; Mrs. Carter, clothing; Mrs. Lorry, clothing; Mr. Jack, rhubarb and dripping; a friend, mattress; a friend, clothing; Mrs. Cottrall, clothing; Times and Colonist Publishing Co.'s, daily papers; Mr. Emanuel Levis, oak bedstead and mattress.

GRAND LODGE OF K. OF P.

(Special to the Times.)

Rossland, May 9.—Grand Lodge Knights of Pythias of the Domain of British Columbia was called to order at 9.15 o'clock yesterday morning, when all the lodges were represent. On the roll call the following officers were present:

G. C., W. D. Mearns; G. V. C., J. W. Graham; G. Pret., J. L. Brown; G. M. at A., N. Binns; G. K. R. S., Emil Pferdner; G. I. G., J. D. Griffith; G. O. G., A. Ferguson.

The G. M. of Ex., E. P. Nathan, was unable to attend, through illness in his family.

The reports of the Grand Chancellor, G. K. of R. S. and M. of Ex. were read, which show the order to be in a very prosperous condition, both numerically and financially. Four new lodges have been instituted during the year, and the outlook for the coming term is very bright, as applications for warants are already in the hands of the proper officers. The order has made a gain the past year of some 200 members throughout the province.

Committee work was the principal business conducted yesterday. The first order for this morning was the election of officers for the ensuing year.

Letters of welcome were read from prominent Pythians of Rossland, and the officers and delegates are being right royally entertained.

Trent Bridge Disaster

Texts of Judgments of the Full Court as Delivered Yesterday.

The Appeal of the Union Colliery Company Against Conviction and Fine.

As reported in the Times yesterday the Full Court, consisting of Chief Justice McColl and Justices Drake, Irving and Martin, delivered judgment in Regina v. the Union Colliery Company, an appeal from the conviction and finding of the company in connection with the Trent bridge disaster. The Chief Justice and Mr. Justice Martin held that the conviction should stand, Justices Drake and Irving being of the opposite opinion. The conviction therefore stands. The judgments follow:

CHIEF JUSTICE McCOLL.

The question to be determined is whether the company is liable to punishment under any section of the Code. S. 933.

Section 252 provides that "Everyone is guilty of an indictable offense and liable to two years' imprisonment who by any unlawful act or by doing negligently or omitting to do any act which it is his duty to do causes grievous bodily injury to any other person."

The term "one" is used throughout the code as of the same meaning as "person," and therefore by s.s. (t) s. 3 corporations aggregate are within s. 252, "in relation to such acts and things as they are capable of doing and owning respectively." The company being admittedly liable in damages for injury caused by its default in not maintaining the structure in question in a sufficient condition an indictment would be against it at common law for breach of duty.

The position at common law was stated by Lord Denman, C.J., in 1846, in Reg. v. The Great North of England Railway Co., 10 jurist, p. 755, to be undisputed, and s. 933 leaves the common law in force. Tash. p. 959.

That being so, to apply s. 252 to the company adds nothing to its criminal responsibility for what it is here charged with. Is the section applicable to it?

The Judicial Committee in 1892, A.C. at p. 487, laid down the rule applicable to a statutory code as being that if any enactment is in itself "intelligible and free from ambiguity the law should be interpreted by interpreting the language used," and that resort ought not to be had to the pre-existing law except upon some such special ground as that the language is of "doubtful import," or "had previously acquired a technical meaning."

Lord Justice Thesiger in (1880) 5 Q. B.D., at p. 319, formulates three rules by which the determination whether the term "person"—the equivalent to "one" as used in the code—includes corporations, holding they should not be included except where "first the term is expressly interpreted as including them, or, secondly, the context of the act clearly shows that they are included, or, thirdly, the object and scope of the act peremptorily require them to be so included and the context does not clearly negative a construction to that effect."

In my opinion all three conditions exist in the present case.

The breach of duty may have been the omission of the company alone, and even if some person connected with it is also liable, Lord Denman in the judgment referred to shows the great importance to the public for maintaining the liability of the company as well.

The cases of Reg. v. Tyler & Co., (1891) 2 Q.B.D. (C.A.), p. 588; and Reg. v. Toronto Ry. Co., 2 C. C. C., p. 471, may be usefully considered.

As s. 230 defines manslaughter to be culpable homicide not amounting to murder, and s. 218 defines homicide to be the killing of a human being by another, a corporation cannot be convicted of such an offense.

But the words "grievous bodily injury" in section 252 have no technical meaning, and in their natural sense include injuries resulting in death, and there being no conflict between this section and any other enactment relating to corporations, it would be most extraordinary if the company could escape liability merely because the consequences of its breach of duty were more serious than would have sufficed to make it punishable.

It was argued that the heading of the group of sections in which s. 252 is found "Bodily injuries and acts and omissions causing danger to the person" indicates that this section was not intended to apply in case of death. But many of these sections deal with acts and omissions likely to cause death, and one at least (s. 255) expressly provides for the case of death caused by an omission, so that any light which may be thought to be afforded in this way is not to the advantage of the company.

The distinction between headings so drawn as to be applicable grammatically to the sections following them and headings "inserted for the convenience of reference and not intended to control the interpretation of the clauses which follow" is pointed out in Union, etc., v. Melbourne, etc. (1884), 9 A.C., p. 369, where it is in effect laid down that it lies upon the company to show that to hold s. 252 included a corporation is inconsistent with the context or subject matter merely because death has resulted.

What is the effect of death in such cases?

If a man is charged with manslaughter for death caused by breach of duty and the evidence fails as to the death, but shows grievous bodily injury, he may by section 713 be convicted under section 252, and if charged under section 252 and the evidence discloses that death has resulted and the accused is not convicted of the offense charged, the reason is that death creates a new crime.

But if the offender is a corporation the death is merely a supervening aggravation which, as it creates no new crime, cannot, it seems to me, affect the crime which already existed.

If that be so then, that the death may have ensued at once does not, I think, make any difference, for the injury necessarily proceeds (precedes?) the death and is not the less but the more grievous cause of such result.

As to the nature of the punishment, s. 639 expressly provides that it is to be such as is applicable to corporations, and this was well understood to be a fine. Section 934 leaves the amount of the fine to the discretion of the court.

As to the question of punishment, Lord Blackburn says in (1880) 5 A.C., at pp. 869-870, "I quite agree that a corporation cannot in one sense commit a crime, a corporation cannot be imprisoned if imprisonment be the sentence for the crime. And so in this sense a corporation cannot commit a crime. But a corporation may be fined and a corporation may pay damages, and therefore I must totally dissent notwithstanding what Lord Justice Bramwell said as is reported to have said." "I must really say that I do not feel the slightest doubt on that part of the case."

It was agreed that section 639 only enables a fine to be imposed if the corporation does not appear, that is, in effect it is left to the accused in any case to evade punishment by the use of the expedient of simply appearing. Such a construction is of course out of the question unless the words are incapable of a sensible meaning.

I have not been forced to the conclusion that when parliament imposed upon the courts the duty of convicting corporations guilty of offenses under s. 252 and others applicable to corporations, parliament at the same time purposely left the courts impotent to punish except at the will of the accused themselves. I say purposely, for it is incredible that an error so serious should have remained uncorrected during all the time which has elapsed since the code was passed, though many amendments have since been made. The form of the indictment is perhaps not artificial, but it is, I think, sufficient at this stage in the way the case is stated. Reg. v. Weir, 3 C.C.C., p. 102.

(Signed) A. J. McCOLL, C.J.

MR. JUSTICE DRAKE.

The defendants, a corporation, are indited for that the said company unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining the Howe truss bridge (a bridge erected by the company across the Trent river and forming part of the defendants' railway), and that on the 17th of August, 1898, a locomotive engine and several cars then being run along the said tramway or railway and across the said Howe truss bridge, owing to the rotten state of the timbers thereof were precipitated into the valley of the Trent river, thereby causing the death of certain named persons. The defendants were found guilty, and a fine was inflicted. The question reserved for us is whether this indictment will lie against a corporation.

Sub-section 1 of section 3 of the Criminal Code includes in the expression persons, owner and other corporations of the same kind, bodies corporate.

The expression here is everyone, and prima facie that includes a corporation.

Section 213 indicates that everyone who works, makes or maintains anything which in the absence of precaution or care may endanger human life as under a legal duty to avoid such danger and as criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty.

eSctions 191, 192 were referred to, and it was argued that the indictment could be supported under any section in the code which had reference to the offense charged. Section 191 defines a common nuisance as an act or omission which endangers the lives or safety of the public or by which the public are obstructed in the enjoyment of any common right. The public in its ordinary meaning refers to the community at large, and when applied to property or rights means rights or property common to the enjoyment of all persons. The indictment does not allege an infringement of any duty to the public at large, and I do not think this section applies to the present indictment. Then we have section 192, which says: "Everyone is guilty of an indictable offence and liable to one year's imprisonment or fine who commits any common nuisance which endangers the lives, safety or health of the public." This is still limited to endangering the lives, safety or health of the public, but it proceeds, "or who occasions injury to the person of any individual." Both the offences here indicated, the one of potential and the other of actual injury, must arise out of the committal of a common nuisance. Unless this is shown these sections do not apply.

Section 213 makes the neglect of reasonable precautions when there is a legal duty to take such precautions not a criminal offence but makes the person responsible criminally liable for the consequences; therefore whatever neglect of duty may have existed, that does not constitute an offense under this section, but if that neglect is followed by consequences injurious to the individual, then criminal responsibility arises.

The criminal liability of corporations aggregate for breaches of duty is no new law. This liability has been frequently affirmed in the English courts. In Reg. vs. The Great North of England Railway Company, 9 Q.B., 315, Lord Denman says: "Some dicta occurs in old cases. A corporation cannot be guilty of treason or felony, and it might be added of perjury or offenses against the person; but it is liable for assault committed by its servants if authorized by them; it is also liable for libel, trespass and misfeasance." See R. v. The Great North of England Railway Company, 9 A. & E., 314.

The indictment charges the company with the death of certain persons owing to their neglect of duty. This is a charge of manslaughter, the punishment of which is a term of imprisonment for life. But a corporation cannot suffer imprisonment, therefore the punishment laid down in the Code is not applicable to such a body.

The Code by section 252 makes any person who by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do causes grievous bodily injury to any other person, liable to two years' imprisonment. This section, if the indictment had alleged grievous bodily injury alone to some individual, might have been invoked in order to make section 958, under which the fine was inflicted, applicable, but the indictment as I read it is an indictment for manslaughter.

Does the term grievous bodily injury apply when death results from the neglect of duty?

I do not think that the use of the term bodily injury is of any greater import than bodily harm. In every case when death ensues bodily harm or injury has been done. But the penalties are distinct, and in the case of Reg. vs. Friel, 17 Cox C.C., 1890, Williams, J., held that when there had been a summary conviction for assault, and the person assaulted dies of the injury, a plea of autre fois convicte is not necessary to an indictment for manslaughter, because the death is a new fact, not a mere matter of aggravation, or a mere consequence, because in cases of manslaughter based on death resulting from culpable negligence there is no criminal offense unless death ensues and gives rise to a charge of manslaughter. On this last remark of the learned judge section 252, which I am now considering, is not in the English act, but when death ensues the offense is no longer grievous bodily injury but culpable homicide.

The object of an indictment is to enable the defendant to know what case he has to meet. The necessary facts must be set out with certainty, but there is no necessary form of words to make a perfect indictment if all essential allegations are contained in it, and if the offense created by the statute is in substance charged. The question whether this indictment is good or bad is not before us, but it certainly does not indicate to the defendants that they are called upon to plead to a case of grievous bodily injury. They are called upon to plead to an indictment for unlawfully causeing the death of certain individuals, which would be culpable homicide, and a corporation cannot be tried on such an indictment. In my opinion the question submitted to us must be answered in the negative.

(Signed)

M. W. TYRRWHITT DRAKE, J.

Mr. Justice Irving concurred in this.

MR. JUSTICE MARTIN.

In this matter, the question reserved for the court is, will the indictment lie against a corporation?

In regard to the point raised as to the offense being a nuisance, sections 191 and 192, I need only add to the remarks of my brother Drake, that the lucid notes on said sections to be found in Crankshaw, fully support the view taken as to the nuisance dealt with by said sections being in such a case a common one.

Section 213 I regard as merely laying down a principle of criminal responsibility, and liability to be indicted arises only in the event of consequences resulting which are offenses against the criminal law. A careful consideration of Part XVI. of the Code, which embraces section 209-17 under the heading "Duties tending to the preservation of life," seems to make this clear. Further, it is significant that in the schedule of forms of indictment under said Part forms are given to be used in connection with all the sections in the Part except the three sections of a declaratory nature, i.e., 212, 213 and 214.

The consequences for which a corporation may be made responsible by said section 213 cannot be manslaughter, because, as pointed out by the learned Chief Justice, the definitions of homicide and manslaughter contained in sections 218 and 230 restrict that crime to a "human being." The defendant company, then, was not, and could not have been, indicted for manslaughter since it is a physical impossibility that it could have committed that offense, or any other which infers a physical existence, e.g., rape: as Lord Denman said in Regina v. Great North of England Ry. Co. (1846) 9 Q.B., 326, "Nobody has sought to fix them (corporations) with acts of immorality." The defendant company not being a human being had no reason to suppose that it was being indicted for an offense that could only have been committed by a human being, so the question here is, What offense was it indicted for? The only offense mentioned in the Criminal Code which it was called upon to answer is that set out in section 252. If a "human being," to quote section 218, had been arraigned under this indictment I have no doubt that we would have, under the criminal practice of to-day, by reason of the beneficial results of recent enactments and decisions, been entitled to suppose that he was charged with manslaughter, because even though the indictment does not use the historic words "kill and slay," or "manslaughter," which are mentioned in the forms of indictment under Title V. of the Code, yet section 611, wherein the present requirements of an indictment are specified, provides that the statement of the offense "may be made in popular language without any technical averments or any allegations of matter not essential to be proved," and that such statement may be "in any words sufficient to give the accused notice of the offense with which he is charged." The effect of this section has been considered in the case of Regina v. Lapierre (1897), 1 C. C. C. 413, and again quite recently in Regina v. Weir ('99), 3 Can. C. C., 102. In the latter case at p. 107, Mr. Wurtele says, referring to an indictment then in question:

"The language used is certainly ungrammatical, and the drafting or wording of the indictment is faulty in construction, but as it contains a statement of all the facts and circumstances which are essential to constitute the offense created by section 99 of 'The Bank Act,' it is not bad on that account."

But though, under the above authorities, the indictment is so framed that now, but not formerly, a "human being" might have been justified in thinking the charge he had to meet was manslaughter, what does it contain that, so far as the Code is concerned, would give a corporation any ground or reason for believing that it had to meet any other charge than one of causing grievous bodily injury under section 252? After mature reflection I am constrained to answer, nothing. It is not as though there was any other statute, or section in the Code, relating to the offense, or that any new offense had been created unknown to the common law, or that, so far as the defendant company is concerned, any other charge might be brought against it upon the indictment. So this is not a case where a defendant company might not be able to gather from the indictment what statute it was charged under, because, as has been seen, there is only one section of the Code which is applicable. Nor could any question arise as to whether the offense charged was against the common law or the statute, because the language used in the evidence would be the same in either case. This this indictment may be supported at common law I do not understand to be disputed—Regina v. the Great North of England Railway Co. supra., followed in The Eastern Counties Railway Co. v. Broon (1851), 6 Ex., 314; and Whitfield v. South Eastern Railway Co. (1858), E. B. & E., 114, in which last mentioned case Lord Campbell, C.J., said "an indictment may be preferred against a corporation aggregate both for commission and omission, to be followed up by fine, although not by imprisonment."

I have considered the case of Regina v. Friel (1891), 17 Cox, 325, but the circumstances therein differ so materially from the case at bar that I am unable to derive assistance from it.

In view of the fact that the judgment of the learned Chief Justice, which I have had the benefit of perusing, exactly expresses my view of the case, it is unnecessary to give at greater length my reasons for answering the question in the affirmative.

(Signed) ARCHER MARTIN, J.