

"It is the legal duty of every one who does any act which without ordinary precautions is or may be dangerous to human life, to employ those precautions in doing it." Stephen's Digest of Criminal Law, 6th ed., article 237.

Sec. 247 of the Criminal Code declares criminal responsibility for the consequences of omitting to take reasonable precautions against and to use reasonable care to avoid endangering human life, provided the omission so to do is without "lawful excuse."

Secs. 16 to 68, inclusive, of the Criminal Code, 1906, deal with matters of justification and excuse. By sec. 16 "All rules and principles of the common law which render any circumstances a justification or excuse for any act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith."

The common law is not abrogated by the Code, and will still be applicable in cases for which no provision has been made in the Code as well to their prosecution and defence. Even in cases provided for by the Code the common law jurisdiction as to crime is still operative except where there is a repugnancy in which event the Code will prevail. *R. v. Cole* (1902), 5 Can. Cr. Cas. 380, 3 O.L.R. 389; *R. v. Walkem* (1908), 14 B.C.R. 1 at p. 7.

Culpable homicide, not amounting to murder, is manslaughter. Cr. Code sec. 262.

And, with certain limitations as to the time of death being within a year and a day of the cause of death (Cr. Code sec. 254), homicide is culpable when it consists (inter-alia) in the killing of any person by an omission without lawful excuse to perform or observe any legal duty. Cr. Code sec. 252. The legal duty referred to is presumably a duty qua the criminal law which is the subject of the Code and does not refer to such civil rights as are, in general, outside of the legislative jurisdiction of the Dominion Parliament and are delegated to the legislative control of the Provincial Legislatures by the British North America Act 1867 Imp., ch. 3.

The decision in the *McCarthy* case, *supra*, affirms in the result the majority opinion of the Saskatchewan Court of Appeal; see *R. v. McCarthy* (1921), 57 D.L.R. 93, 14 Sask.