

Criminal Code, the offence was reduced to manslaughter, as having been committed "in the heat of passion caused by sudden provocation." There was evidence that before the killing, S. had laid hands on the defendant and put him out of his (S.'s) house. The Judge at the trial directed the jury that S. was at the time he was killed "doing that which he had a legal right to do," and that there was therefore no provocation and no question of fact to be submitted to the jury to reduce the crime to manslaughter.

*Held*, misdirection; for whether or not the deceased at the time he was shot was doing what he had a legal right to do depended upon whether, if the jury accepted as true the statement of the defendant given in evidence as to the circumstances attending the shooting, the deceased had, before laying hands upon him, ordered him to leave his house, and whether, if he had done so, the prisoner had refused to leave, and whether, if violence was used in putting him out, it was greater than was necessary; and the deceased was clearly not doing what he had a legal right to do if the facts were found in favor of the defendant's contention on these points.

New trial directed, upon an appeal under sec. 744 of the Criminal Code.

*Lount*, Q.C., for the defendant.

*J. R. Cartwright*, Q.C., for the Crown.

BOYD, C., FERGUSON, J. }  
ROBERTSON, J. }

[June 24.

SANDUSKY v. WALKER.

*Company—Promoters—Liability for goods supplied—Appeal from report of referee.*

A steamer was purchased for the benefit of all the shareholders of a projected company to be organized for the purchase and running of it, and was held by one of the subscribers as trustee for the others. The boat was run for their benefit in advance of incorporation, as all knew. All were aware of these operations, and all admitted under their hands that they were jointly interested in the steamer. Most of them took part more or less in the operations of the company, attending meetings and directing affairs on the steamer or in the conduct of the office business. All would have expected to share in the profits had any been made.

Certain coal was supplied for the use of the boat on the order of the captain or manager of the boat, who stated that the trustee of the boat would pay the bill. The price of the coal being sued for, certain of the subscribers to the stock of the company, which was never actually incorporated, paid the amount of the bill.

*Held*, that there was a right of contribution to the amount of the coal bill against all the other subscribers to the stock.

*Held* also that the contribution should be without reference to what had been paid on shares, the liability not arising in respect of calls upon the shares, though the amount of shares subscribed by each might well regulate the quantum of contribution as between those jointly liable.

*W. Cassels*, Q.C., *W. R. Riddell*, *Mabee* and *Clarke*, for the various parties.