THE UNION COLLIERY COMPANY..APPELLANT; 1900

AND *Oct. 22.
*Dec. 7.

HER MAJESTY THE QUEEN.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

Criminal law—Manslaughter—Indictment against body corporate—Crim. Code, s. 213—Fine.

Under sec. 213 of the Criminal Code a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control.

The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a ground for quashing the indictment.

As sec. 213 provides no punishment for the offence the common law punishment of a fine may be imposed on a corporation indicted under it.

APPEAL from a decision of the Supreme Court of British Columbia (1) affirming the conviction of the app nt company on a case reserved.

The company was indicted for unlawfully causing the death of certain persons by neglecting to properly maintain a bridge over which certain trains were run when a train broke through. At the trial a verdict of guilty was entered and a case was reserved for the opinion of the Court of Appeal on the question whether or not the indictment would lie against a corporation. The reserved case is set out in the judgment of Mr. Justice Sedgewick speaking for the majority of the court.

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*PRESENT:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

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Aylesworth Q.C. for the appellant.

Christopher Robinson Q.C. for the respondent.

TASCHEREAU J. took no part in the judgment.

The judgment of the majority of the court was delivered by:

SEDGEWICK J.—This is an appeal from a judgment of the Supreme Court of British Columbia, upon a reserved case stated by Mr. Justice Walkem for the consideration of the court, the defendants having been convicted and sentenced to pay a fine of $5,000. Upon the appeal the court was equally divided. The following is the reserved case:

The defendants were tried and convicted at the fall assizes, at Victoria, before the Honourable Mr. Justice Walkem and a jury, under the following indictment:

CANADA: PROVINCE OF BRITISH COLUMBIA, COUNTY OF NANAIMO, CITY OF NANAIMO. } The jurors for our Lady the Queen present that the "Union Colliery Company of British Columbia, Limited Liability," is a company duly incorporated under the "Companies Act, 1878," for the purpose, amongst other things, of acquiring coal lands in the Province of British Columbia, of extracting the coal therefrom, and of erecting and using tramways and roadways necessary for transporting said coal from the mines to the place of shipment.

The jurors aforesaid do further present that the said company, pursuant to the said powers, have for a long time past been mining coal near Union, in the County of Nanaimo, in the Province of British Columbia, and have been transporting said coal from said mines to Union Wharf, in said county, the place of shipment thereof, along a tramway or railway, in cars drawn by locomotives.

The jurors aforesaid do further present that the said tramway or railway is about ten miles in length, and that for some time past the company has been carrying passengers as well as hauling coal on said tramway or railway, between said points.

The jurors aforesaid do further present that the said tramway or railway, on the day and year hereinafter mentioned, was carried across the valley of the Trent River by trestle-work and a Howe truss bridge erected several years prior to said date, which truss bridge was about one hundred and thirty-three feet in length, and about

ninety-five feet above the bed of the said river, and that the said trestle-work and truss bridge were maintained by the said company.

The jurors aforesaid do further present that in the absence of reasonable precaution and care the said Howe truss bridge might endanger human life, and that the said company were under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger.

The jurors aforesaid do further present that the said company unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining the said Howe truss bridge, and that on the seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-eight, a locomotive engine and several cars, then being run along said tramway or railway and across said Howe truss bridge by said company, broke down said Howe truss bridge, owing to the rotten state of the timbers thereof, and were precipitated into the valley of the Trent River, thereby causing the death of Alfred Walker, Richard Nightingale, Walter Work, Alexander Mellodo, K. Nanko (Japanese), and Osana (Japanese), who were then on said cars and locomotive, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, Her Crown and dignity.

The question reserved for the opinion of the court is:—Will the indictment lie against a corporation? If this question be answered in the negative, the conviction is to be quashed; otherwise, the conviction is to stand.

A verdict of guilty having been found against the defendants upon the indictment above set out, we must assume that all the facts therein stated are correct. And they are substantially as follows: The company in pursuance of its corporate powers had for a long time past been operating a railway for the purpose of transporting coal from their mines to a place of shipment by means of locomotives, and whether in pursuance of their *corporate* powers or not, they, as a matter of fact, were engaged in the carrying of passengers, holding themselves out as common carriers by railway. The road crossed the Trent River by means of a bridge 130 feet in length and 90 feet above the river bed. The company neglecting to use reasonable care in maintaining the bridge so that it

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became unsafe, ran a train carrying passengers across it, which train broke through owing to the rotten state of its timbers, causing the death of six persons then being on the train. And the sole question for our consideration is whether these facts constitute a criminal offence, whether by statute or at common law.

It was at one time thought that a private corporation could not commit torts or be held liable for the wrongful acts of its officers or agents, but this view has long since been exploded. A similar notion obtained in early times as to the criminal liability of a corporation, but it has long since been settled that they are liable to indictment for non-feasance, or for negligence in the performance of a legal duty. It was not until 1846 that their liability for misfeasance or active negligence was determined to be subject to like proceeding. In the case of *The Queen* v. *The Great North of England Railway Co.* (1), in 1846, Lord Denman C.J. in delivering the judgment of the court, said, at p. 325:

> The question is, whether an indictment will lie at common law against a corporation for a misfeasance, it being admitted, in conformity with undisputed decisions, that an indictment may be maintained against a corporation for non-feasance. * * * * But the argument is, that for the wrongful act a corporation is not amenable to an indictment, though for a wrongful omission it undoubtedly is; assuming in the first place, that there is a plain and obvious distinction between the two species of offence.
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> No assumption can be more unfounded. Many occurrences may be easily conceived, full of annoyance and danger to the public, and involving blame in some individual or some corporation, of which the most acute person could not clearly define the cause, or ascribe them with more correctness to more negligence in providing safeguards or to an act rendered improper by nothing but the want of safeguards. If A. is authorised to make a bridge with parapets, but makes it without them, does the offence consist in the construction of the unsecured bridge, or in the neglect to secure it?

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But if the distinction were always easily discoverable, why should a corporation be liable for the one species of offence and not for the other? The startling incongruity of allowing the exemption is one strong argument against it. The law is often entangled in technical embarrassments; but there is none here. It is as easy to charge one person, or a body corporate, with erecting a bar across a public road as with non-repair of it; and they may as well be compelled to pay a fine for the act as for the omission.

This case has been followed on many occasions, and cited with approval in the House of Lords. In the case of *Whitfield* v. *South Eastern Railway Co.* (1), Lord Campbell held that a railway company might be sued for a malicious libel, and in the course of his judgment says:

The ground on which it is contended that an action for a libel cannot possibly be maintained against a corporation aggregate fails. But, considering that an action of tort or of trespass will lie against a corporation aggregate, and that an indictment may be preferred against a corporation aggregate both for commission and omission, to be followed up by fine, although not by imprisonment, there may be great difficulty in saying that under certain circumstances express malice may not be imputed to and proved against a corporation. The authorities are connected and commented upon in *Regina* v. *Great North of England Railway Company* (2), in which it was held that a corporation aggregate may be indicted for cutting through and obstructing a public highway.

And in the *Pharmaceutical Society* v. *London & Provincial Supply Association* (3), Lord Blackburn says, at p. 869:

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; a corporation cannot be hanged or put to death if that be the punishment for the crime; and so, in those senses 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, or is reported to have said, upon the supposition that a body corporate, or a corporation that incorporated itself for the purpose of pub-

(1) E. B. & E. 115.
(2) 9 Q. B. 315.
(3) 5 App. Cas. 857.

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lishing a newspaper could not be tried and fined, or an action for damages be brought against it for libel; or that a corporation which commits a nuisance could not be convicted of the nuisance or the like. I must really say that I do not feel the slightest doubt upon that part of the case.

From these authorities it is manifest that a corporation can render itself amenable to the criminal law for acts resulting in damage to numbers of people, or which are invasions of the rights or privileges of the public at large, or detrimental to the general well being or interests of the state. It appears to me perfectly clear that the offence set out in the declaration comes within this description. A public franchise was granted to the defendants to maintain and operate a railway between two certain points. They were possibly under no obligation to accept the charter, but having once accepted and acted upon it, they were under an obligation to exercise proper care and diligence in the performance of their corporate powers. Holding themselves out, as we are bound to assume they did, as public carriers, they were bound to carry their passengers safely. Even as carriers not of passengers, but of freight, carrying on their business by means of trains and locomotive engines, they were, in my view, equally bound to see to the safety and protection of their employees. Whether the persons alleged in the indictment to have been killed were employees or passengers does not appear, but whether passengers or employees, the company defendants were under an equal obligation to both, and the offence committed was an offence not so much against individual right or against people in their private capacities, but against the public at large, and therefore, in the public interest, indictable.

The learned Chief Justice has stated that the question to be determined is whether or not the company is liable to punishment under any section of the Code. Or,

(I add) at common law. It has never been contended that the Criminal Code of Canada contains the whole of the criminal common law of England in force in Canada. Parliament never intended to repeal the common law, except in so far as the Code either expressly or by implication repeals it. So that if the facts stated in the indictment constitute an indictable offence at common law, and that offence is not dealt with in the Code, then unquestionably an indictment will lie at common law; even if the offence has been dealt with in the Code, but merely by way of statement of what is law, then both are in force. As stated by a text writer

> we can always separate the offence from the punishment. So that for example a statute which provides a new punishment for an old offence, repeals by implication only so much of the prior law as concerns the punishment, leaving it permissible to indict an offender either under the old law, whether statutory or common, and inflict upon him, upon conviction, the punishment ordained by the new, or under the new statute at the election of the prosecuting power. The offence and punishment, therefore, may be defined by different laws; and so, as we have seen, if a statute simply creates an offence, the common law punishment may by implication be imposed. Bishop on Statutory Crimes, 2 ed. p. 166.

But the ground of offence set out in the declaration has, it is clear, been dealt with by the Code, and the indictment is evidently framed, the prosecuting officer having them before him, under the provisions of section 213, which is as follows:

> Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to avoid such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty.

This article I take to be a mere statutory statement of the common law, neither abridging nor enlarging it in any respect. It is true this section has no penal

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provision attached to it; it does not state what the consequences shall be if the offence therein specified has been committed; but it clearly covers the offence specified here. The defendants have in their charge and under their control, and they maintain, a railway the running and operation of which without precaution or care must necessarily involve danger to human life. They were therefore under a legal duty to take precautions against such danger. They disregarded this duty. The anticipated event occurred and they are criminally responsible for it. It is not, I think, necessary to search through other provisions of the Code to find a penalty. The common law, in the case of a corporation, prescribed it—a fine. And the indictment is properly framed and the verdict found, and the fine imposed, both under it and the common law together.

It was, however, contended, that "every one" at the beginning of the section, does not include a corporation. I think it does. Section 3 (*t*) states:

> The expressions "person," "owner," and other expressions of the same kind include Her Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes, municipalities or other districts, in relation to such acts and things as they are capable of doing and owning respectively.

"Everyone" is an expression of the same kind as "person," and therefore includes bodies corporate unless the context requires otherwise. There is no doubt that the expression "every one" is, whether in a legal or popular sense, a wider term than the word "person," and in the case of *Pharmaceutical Society* v. *London and Provincial Supply Association* (1), already referred to, the Lord Chancellor (Lord Selborne), says:

> There can be no question that the word "person" may, and I should be disposed myself to say *primâ facie* does, in a public

(1) 5 App. Cas. 857.

statute, include a person in law; that is, a corporation, as well as a natural person. * * * *

That if a statute provides that no person shall do a particular act except on a particular condition, it is *primâ facie*, natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject matter, to exclude that construction) to understand the legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called "persons" in law, have no capacity to do so at any time, by any means, or under any circumstances, whatsoever.

Applying this rule to the present case, inasmuch as criminal offences committed by corporations are for the most part offences confined to the class in question in the present case, namely, cases arising from dereliction in the performance of public duty, at all events, offences as possible and likely to be committed by artificial as by natural persons, there can be no reason, that I can see, why a corporation should not be included in the phrase "every one." The article is a statement of general principle of criminal law, applicable to the whole world, and binding as much upon corporations as upon individuals.

Several sections of the Code were cited to us at the argument, as including within their purview the offence described in the indictment. If I am correct in the view I have taken of section 213 above cited, the offence described in the indictment comes within arts. 191 and 192, where the offence of a common nuisance is described and its punishment provided for, the first section being a mere statement of the common law in regard to criminal nuisance. Whether it does not also come within sections 251 and 252 may be open to argument, although I am strongly inclined to the view that where the Code specifies an offence and provides for the punishment by imprisonment only, it does not necessarily follow that a corporation

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may not be indicted and fined for the offence so described. It is not, however, necessary to determine that point here.

It is further argued that as the indictment disclosed a case of manslaughter, and as (as is stated) an indictment will not lie against a corporation for manslaughter, the conviction was not maintainable. It is possible that the facts alleged in the indictment would be sufficient to sustain an indictment for manslaughter against an individual, but the offence alleged in the indictment here is not the manslaughter; it is criminal negligence in the discharge of duty. The killing is not alleged as the offence, but merely the consequence of the offence. In an indictment for manslaughter it is at least necessary to charge manslaughter as the crime—to allege that the defendants "unlawfully did kill and slay, &c." or "did commit manslaughter," allegations wholly absent in the present case. It is not, therefore, necessary here to express any opinion as to whether or not under the present state of the law and its constantly broadening and widening jurisprudence on the subject of the civil and criminal liability of bodies corporate, they are capable of committing the offence.

KING J. (dissenting).—I am of opinion that the question stated in the reserved case should be answered in the negative, with the result that the appeal should be allowed and the conviction quashed.

Appeal dismissed.

Solicitors for the appellant: *Davie, Pooley & Luxton.*

Solicitor for the respondent: *H. A. Maclean.*