

C. A. has held that the case ought to be tried in the inferior Court,
1893 and we cannot interfere with the exercise of their discretion,
which, in my opinion, was rightly exercised.

BANES
v.
HOLLINGS-
WORTH.

Appeal dismissed.

Solicitors for plaintiff: *W. H. Smith & Sons.*

Solicitor for defendant: *C. G. Algar.*

W. J. B.

1893
Feb. 4.

[CROWN CASE RESERVED.]

THE QUEEN v. INSTAN.

*Criminal Law—Offences against the Person—Manslaughter—Neglect to provide
Food or Medical Attendance for Person of Full Age.*

The prisoner, a woman of full age and without any means of her own, lived with and was maintained by the deceased, her aunt, a woman of seventy-three. No one lived with them. For the last ten days of her life the deceased suffered from a disease which prevented her from moving or doing anything to procure assistance; during this time the prisoner lived in the house and took in the food supplied by the tradesmen, but apparently gave none of it to the deceased, nor did she procure for her any medical or nursing attendance, or inform any one of the condition of the deceased, although she had abundant opportunity to do so. No one but the prisoner had any knowledge of the condition of the deceased prior to her death, which was substantially accelerated by want of food, nursing, and medical attendance:—

Held, that a duty was imposed upon the prisoner under the circumstances to supply the deceased with sufficient food to maintain life, and that, the death of the deceased having been accelerated by the neglect of such duty, the prisoner was properly convicted of manslaughter.

CASE stated by Day, J.

Kate Instan was tried before me at the last assizes for the county of Worcester upon a charge of feloniously killing one Ann Hunt. The prisoner, who is between thirty and forty years of age and unmarried, had no occupation and no means of her own of living. She was a niece of the deceased.

At the time of the committal of the alleged offence, and for some time previous thereto, she had been living with and had been maintained by the deceased. Deceased was a woman of some seventy-three years of age, and until a few weeks before her death was healthy and able to take care of herself. She was

possessed of a small life income, and had in the house in which she lived some little furniture, and a few other articles of trifling value. The two women lived together in a house taken by the deceased; no one lived with them or in any way attended to them.

1893
 THE QUEEN
 v.
 INSTAN.

The deceased shortly before her death suffered from gangrene in the leg, which rendered her during the last ten days of her life quite unable to attend to herself or to move about or to do anything to procure assistance. No one but the prisoner had previous to the death any knowledge of the condition in which her aunt thus was. The prisoner continued to live in the house at the cost of the deceased, and took in the food supplied by the tradespeople; but does not appear to have given any to the deceased, and she certainly did not give or procure any medical or nursing attendance to or for her, or give notice to any neighbour of her condition or wants, although she had abundant opportunity and occasion to do so.

The body of the deceased was on August 2, while the prisoner was still living in the house, found much decomposed, partially dressed in her day clothes, and lying partly on the ground and partly prone upon the bed. The death probably occurred from four to seven days before August 3, the date of the post-mortem examination of the body. The cause of death was exhaustion caused by the gangrene, but substantially accelerated by neglect, want of food, of nursing, and of medical attendance during several days previous to the death. All these wants could and would have been supplied if any notice of the condition of the deceased had been given by the prisoner to any of the neighbours, of whom there were several living in adjoining houses, or to the relations of the deceased, who lived within a few miles. It was proved that the prisoner, while the deceased must have been just about dying, had conversations with neighbours about the deceased, but did not avail herself of the opportunities thus afforded of disclosing the condition in which she then was.

At the close of the case it was objected on behalf of the prisoner, that there was no evidence of any legal duty such as would bind the prisoner to give or to procure any food, or nursing, or attendance to or for the deceased, or to give any notice to any

1893
 THE QUEEN
 v.
 INSTAN.

one that such was required. I thought it better not to stop the case, but to leave it to the jury to say whether, having regard to the circumstances under which the prisoner lived with the deceased, and continued to occupy the house, and to take the food provided at the expense of the deceased, while the deceased was, as she knew, unable to communicate with any other person and thus to procure necessaries for herself, the prisoner did or did not impliedly undertake with the deceased either to wait upon and attend to her herself, or to communicate to persons outside the house the knowledge of her helpless condition; and I told them that if they came to the conclusion that she did so undertake, and that the death of the deceased was substantially accelerated by her failure to carry out such undertaking, they might find the prisoner guilty of manslaughter, but that otherwise they should acquit her. The jury found the prisoner guilty.

If the facts above stated do not afford evidence of the existence of any such undertaking or duty, then the conviction is to be quashed; if otherwise, it is to stand.

Vachell, for the prisoner. There was no legal duty imposed upon the prisoner to provide food or attendance for the deceased during the last ten days of her life; there was certainly no such duty before that time, for the deceased was the head of the household and able to help herself. Such a duty as is here sought to be enforced can only arise by virtue of a statute or a contract, or at common law. It must be conceded that there was no statutory duty, neither was there any duty at common law; there is no authority for the existence of any such common law duty in the case of a person of full age; in such a case the duty can only arise in respect of an undertaking, express or implied. In *Rez v. Friend* (1), it was held to be an indictable offence to refuse or neglect to provide sufficient food, bedding, &c., to an infant of tender years, unable to provide for and take care of itself, whom a man was obliged by duty or contract to provide for; but the decision was in terms confined to such cases, and the indictment was held to be defective in not stating the child to be of tender years and unable to provide for itself. In *Reg. v.*

(1) R. & R. 20.

Shepherd (1), it was held that there was no duty upon a woman to procure a midwife for her daughter, a girl of eighteen, and that she could not be convicted of manslaughter for omitting to do so. In his judgment, Erle, C.J., says: "Here the girl was beyond the age of childhood, and was entirely emancipated." In the case of a person of full age such a duty may indeed arise out of an express or implied undertaking: *Reg. v. Marriott* (2), where a man was convicted of the manslaughter of an elderly and infirm woman, whom he had taken home to live in his house, promising to make her happy and comfortable. In summing up in that case, Patteson, J., said: "The cases which have happened of this description have been generally cases of children and servants, where the duty was apparent. This is not such a case; but it will be for you to say whether, from the way in which the prisoner treated her, he had not by way of contract, in some way or other, taken upon him the performance of that duty which she, from age and infirmity, was incapable of doing." In the present case there was no evidence of any contract or undertaking by the prisoner to take care of her aunt, though no doubt she was under a moral obligation to do so.

1893
THE QUEEN
v.
INSTAN.

[HAWKINS, J. Why should not a contract be implied from such circumstances as those in this case? Suppose two people agreed to live together for their mutual benefit, would not the mere fact of their living together be evidence from which an undertaking might be implied?]

[CAVE, J. When the prisoner took in food paid for with the deceased's money, she had no right to apply it all for her own use. Did she not then undertake a duty towards the deceased?]

Not by way of contract so as to raise a legal duty; it was nothing more than a duty of imperfect obligation.

LORD COLERIDGE, C.J. We are all of opinion that this conviction must be affirmed. It would not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation. A legal common law duty is nothing else than the enforcing by law of that which is a moral obligation without legal enforcement. There can be no

(1) L. & C. 147.

(2) 8 C. & P. 425.

1898
 THE QUEEN
 v.
 INSTAN.
 Lord Coleridge,
 C.J.

question in this case that it was the clear duty of the prisoner to impart to the deceased so much as was necessary to sustain life of the food which she from time to time took in, and which was paid for by the deceased's own money for the purpose of the maintenance of herself and the prisoner; it was only through the instrumentality of the prisoner that the deceased could get the food. There was, therefore, a common law duty imposed upon the prisoner which she did not discharge.

Nor can there be any question that the failure of the prisoner to discharge her legal duty at least accelerated the death of the deceased, if it did not actually cause it. There is no case directly in point; but it would be a slur upon and a discredit to the administration of justice in this country if there were any doubt as to the legal principle, or as to the present case being within it. The prisoner was under a moral obligation to the deceased from which arose a legal duty towards her; that legal duty the prisoner has wilfully and deliberately left unperformed, with the consequence that there has been an acceleration of the death of the deceased owing to the non-performance of that legal duty. It is unnecessary to say more than that upon the evidence this conviction was most properly arrived at.

HAWKINS, CAVE, DAY, and COLLINS, JJ., concurred.

Conviction affirmed.

Solicitors for the prisoner: *Ivens & Morton, Kidderminster.*

W. J. B.