

on the other side like the priest and Levite; he is not answerable to the law. So a medical man may refuse to attend anyone, however sick and however willing and able to pay.¹⁵

A man standing on the wharf sees another's child fall in, which he might easily save by a little effort. The law does not compel him to lift a finger; he may stand and laugh at the child's struggles, ending in death, and he has committed no offence against the law.

Many years ago when I was Counsel representing the Crown in a trial for murder, it was proved that the man who had been shot lay all night at a neighbor's gate, and that the neighbor heard his shrieks and groans but did not come near him till the morning, when he found him at the point of death. I diligently examined the authorities in criminal law to see if I could not charge this callous brute with a crime. I could not.

Most cases of the doctor's association with a crime are of the same nature. The law lays no duty upon him—no legal duty, the neglect of which is an offence against the law—let him clear his soul before God and his fellowmen.

There are cases, indeed, in which the law is not silent, for example, anyone who, though absent at the time of the commission of the crime, procures, counsels, commands or abets another to commit it, is equally guilty with the actual offender. But the mere knowledge that an offence is to be committed is not enough, so long as there is nothing done to encourage or aid its commission. Some years ago I prosecuted in Belleville, a half-breed Indian¹⁶ for the

¹⁵ This is not so in some countries. In some places it is thought that the monopoly given by law to the medical man may well place on him the obligation to exercise the monopolized art when called upon to do so.

In the ancient law of most countries the position of most men determined their rights and duties. This was so anciently in England; but now only the common inn-keeper and the common carrier are obliged to serve all comers. The barrister is by the etiquette of his profession obliged to take any brief offered him, unless it be against some client of his, but may demand in advance any retaining fee he pleases; and thus he may in practice prevent his retainer in cases he does not like.

The change in law is a change from *status* to *contract*. The relative rights and duties between man and man are determined by the bargains they make, not by their station in life or their profession.

¹⁶ The prisoner was Peter Edwin Davis, who murdered William Emory in September, 1899. Davis was said to be the grandson of a favorite officer of the Emperor Napoleon, who, when his sovereign was sent to St. Helena, came to Canada, went to the wilds of North Hastings, and there married the only daughter of an Indian chief. The only daughter of that union married a white man by the name of Davis, and several children (amongst them the prisoner) were the issue of this union. Peter Edwin Davis was a stalwart, muscular young man, over six feet in height, straight as a pine, swarthy and with lank black hair. The trial took place before Chief Justice Armour at Belleville, April, 1890, and the prisoners were brilliantly defended by R. C. Clute, Q.C. (now Mr. Justice Clute of the Supreme Court of Ontario) and the late S. B. Burdett, Q.C. I prosecuted for the Crown.

The evidence proved to be a demonstration that Mrs. Emory knew her husband was to be slain, but there was nothing to show that she approved of it or took any part in it. She was accordingly acquitted. Davis was convicted and hanged, dying as stolidly as he had lived. He showed no desire for life or fear of death. Mrs. Emory haunted the neighborhood of the gaol until the execution. She afterwards married again. A brief account of this case—singular in many points of view—will be found in the *Canada Law Journal* for 1898 (34 *Can. L. J.*, pp. 68 sqq.).