

## CRIMINAL LAW.

## TORONTO ASSIZES.

REGINA v. MARY ELLEN BEER.

*Manslaughter—Crim. Code, sec. 250—Christian Scientist—Medical treatment.*

The prisoner, who practiced as a Christian Scientist, was called in by the parents of a child suffering from diphtheria. She was not expected and was not retained as a medical attendant. She did nothing but sit silently by the child, without giving any medical and other treatment of any kind. The child died of the disease, and the prisoner was indicted for manslaughter. According to the medical evidence the life of the child might have been saved or prolonged if the usual medical remedies had been applied.

*Held*, that the prisoner could not be convicted under sec. 212 or sec. 214 of the Criminal Code.

*Held* also. (dubitante) that the father of the child could not be indicted, under secs. 209 and 210, for not having supplied the child with a necessary of life viz., medical aid, nor could the prisoner be indicted as an accessory (under sec. 61) to the father's neglect.

[TORONTO, THURSDAY, DEC. 5, 1895, FALCONBRIDGE, J.]

The prisoner was put upon her trial at the Toronto Autumn Criminal Assizes, 1895, charged with the crime of manslaughter in that she did on the 28th of October, 1895, at the city of Toronto, in the County of York, unlawfully kill and slay one Percy Robert Beck, and did thereby commit the crime of manslaughter, according to sec. 230 of the Criminal Code.

The prisoner pleaded "Not guilty."

The circumstances under which the alleged crime was committed, were that the prisoner, practising as a Christian scientist, undertook to attend Percy Robert, a child then six years and nine months old, who was suffering from a mild type of diphtheria. Her treatment of the child consisted, according to the evidence, in simply sitting by the bedside, rarely saying anything, never prescribing, nor in any way touching the child, or making any examination or otherwise diagnosing the patient.

The child died, and the post mortem revealed the fact that the child's complaint was diphtheria of a non-malignant character, a disease rarely fatal, and the evidence of the medical men went to show that had the child been properly treated, it would probably have recovered, and that, at any rate, death had been accelerated by no proper medical attendance.

The contention on behalf of the Crown was that there was such negligence on the part of the prisoner as would make her liable for the death of the child, and furthermore, the Crown maintained that there was a legal liability on the part of the parents to provide proper medical attendance, and that the prisoner, by her conduct, had assisted the parents in their breach of duty, and in that way became an accomplice under section 61 (c) of the Code.

*John A. Barron, Q.C.*, for the Crown.

*Hamilton Cassels*, for the prisoner.

The following charge was delivered to the jury by the learned judge who tried the case :

FALCONBRIDGE, J.—The facts of the case are simple. The father and mother of the little boy, Percy Robert Beck, have been for about two years ad-