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vested,⁴² the majority did little more than affirm the provisions which had been in force since the decree was issued.

The plaintiffs had acquiesced in the decree of distribution for 35 years. While acquiescence alone will not preclude the plaintiffs, it serves as a useful makeweight⁴³ when coupled with an expiration of time for appeal. If there was any ambiguity or error it was no less obvious to the plaintiffs at the time it was issued than at any time subsequent, and to allow them to overthrow the decree is the type of action which the doctrine of laches seeks to prevent.⁴⁴ While it may seem a harsh sanction to deprive the plaintiffs of interests which could have been rightfully theirs, it is noted that all the parties in the present action had ordered their lives in accordance with the distribution decree, and the wisdom of protecting such decrees is readily apparent.

JOSEPH M. SPIVEY, III

CRIMINALLY ENFORCEABLE DUTY TO ACT

It is well established that criminal liability may be predicated upon acts of omission as well as acts of commission when the person being charged is under a legal duty to act.¹ In the recent case of *Palmer v. State*² the Court of Appeals of Maryland affirmed a conviction of involuntary manslaughter against an eighteen-year-old mother for the death of her infant child. The defendant, who had been living out of wedlock with one Edward McCue, failed to prevent frequent inhuman beatings which caused the death of the child. The court reasoned that the defendant had a legal duty to act by virtue of the Maryland Code which charges parents jointly and severally with the support, care, nurture, welfare and education of their minor children. It

⁴²See note 26 supra.

⁴³"The circumstance that the parties have acquiesced in the construction of a will embodied in a particular adjudication is frequently cited by the courts as strengthening the conclusive effect of such adjudication." 57 Am. Jur. Wills § 1034 (1948).

⁴⁴"[E]quity does not impute laches to a party for delay alone, but only for a delay which is unreasonable under the circumstances and which has resulted in harm to the other party." McClintock, Equity § 28 (2d ed. 1948).

¹Craig v. State, 220 Md. 590, 155 A.2d 684 (1959); State v. Staples, 126 Minn. 396, 148 N.W. 283 (1914); Stehr v. State, 92 Neb. 755, 139 N.W. 676 (1913); Commonwealth v. Comber, 170 Pa. Super. 466, 87 A.2d 90 (1952); State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919).

²223 Md. 341, 164 A.2d 467 (1960).

was further held that the defendant's conduct displayed a wanton and reckless disregard for human life; her failure to prevent these beatings constituted criminal negligence which was the proximate cause of the child's death.

Criminal responsibility for acts of omission arises in two types of situations, (1) when a family relationship exists between the parties, and (2) when a contract, either express or implied, imposes a duty. The duties arising from family relationship are those between parent and child and husband and wife. Courts have been reluctant to go beyond these two. Criminal liability based on contract usually arises when there has been an inducement to rely and a resulting helplessness.

The defendant in the present case clearly had a legal duty to act because of the statute,³ and this was not contested on appeal. The principal case illustrates the clearest example of a legal duty imposed by a relationship, *i.e.*, parent and child. At common law the duties of support and maintenance,⁴ medical attention⁵ and education⁶ were vested in the father alone,⁷ but the modern tendency to equalize the rights and duties of parents has led to the enactment of statutes in a number of jurisdictions whereby the responsibility is placed on the mother as well.⁸ Not only could this failure of a parent to provide for a child lead to a criminal conviction at common law, but in most jurisdictions statutes authorize criminal prosecution for parental neglect.⁹ Convictions of murder and manslaughter¹⁰ have been sustained when a child dies because of a parent's wilful or negligent

³Md. Ann. Code art. 72A § 1 (1957) charges the mother of minor children with their care and welfare.

⁴Barrett v. Barrett, 44 Ariz. 509, 39 P.2d 621 (1934); Porter v. Powell, 79 Iowa 151, 44 N.W. 295 (1890); Doughty v. Engler, 112 Kan. 583, 211 Pac. 619 (1923).

⁵Craig v. State, *supra* note 1; Stehr v. State, *supra* note 1; People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

⁶Cf. Bissell v. Davison, 65 Conn. 183, 32 Atl. 348, 349 (1894); State v. Bailey, 157 Ind. 324, 61 N.E. 730 (1901); State v. Spiegel, 39 Wyo. 309, 270 Pac. 1064 (1928).

⁷Cf. Pyle v. Waechter, 202 Iowa 695, 210 N.W. 926, 927 (1926); Soper v. Igo Walker & Co., 121 Ky. 550, 89 S.W. 538, 539 (1905).

⁸Southwestern Gas & Elec. Co. v. Denney, 190 Ark. 934, 82 S.W.2d 17, 19-20 (1935); Risting v. Sparboe, 179 Iowa 1133, 162 N.W. 592 (1917); Denton v. James, 107 Kan. 729, 193 Pac. 307 (1920); Ackeret v. Minneapolis, 129 Minn. 190, 151 N.W. 976, 978 (1915).

⁹Commonwealth v. Kirk, 212 Ky. 646, 279 S.W. 1091 (1926); Stehr v. State, *supra* note 1. For a collection of cases see 39 Am. Jur. Parent and Child § 103 (1942).

¹⁰If the parent's omission to care for the child is malicious, the offense is murder. Rex v. Gibbins & Proctor, 13 Crim. App. R. 134 (1918); Commonwealth v. Hall, 322 Mass. 523, 78 N.E.2d 644 (1948). If the failure to act was only negligent, the offense is manslaughter. Gibson v. Commonwealth, 106 Ky. 360, 50 S.W. 532 (1899); State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919).

omission to provide food, clothing, shelter or medical treatment.¹¹ The illegitimacy of the child has no bearing on the duty of the parent,¹² nor does the duty to act in behalf of the child depend on blood relationship, for a stepfather may assume the duty to act for a stepchild even without adoption.¹³ The parent's legal duty, however, does terminate upon the emancipation of the child.¹⁴

The failure of a mother to care for a child after birth may carry criminal sanctions, but at least two English cases have held that an expectant mother who fails to take any steps to insure the safe delivery of a child is not criminally liable for the death of the child.¹⁵ There is an absence of recent case law on this point, and one writer feels that this distinction is unfounded and contrary to the common law.¹⁶

The greatest difficulty in this area arises when there is a conflict between the legal duty and the parent's religious belief. In *People v. Pierson*¹⁷ the defendant realized that his child was critically ill with pneumonia, and, even though financially able, he refused to call a physician because he believed in divine healing by prayer. The court said:

"[H]is belief constitutes no defense whatever to the charge made. . . . [N]o man can be permitted to set up his religious belief as a defense to the commission of an act which is in plain violation of the law of the state."¹⁸

In *Craig v. State* the court said that "while a person's freedom to believe is absolute, his freedom to act is not."¹⁹ Therefore it seems clear that a parent cannot rely upon his religious belief as a defense for his failure to act where he has a legal duty to do so.

A husband has a legal duty to support and maintain his wife,²⁰ and in some jurisdictions the wife is charged by statute with the sup-

¹¹*Pallis v. State*, 123 Ala. 12, 26 So. 339 (1899); *Westrup v. Commonwealth*, 123 Ky. 95, 93 S.W. 646 (1906); *Stehr v. State*, supra note 1.

¹²*Commonwealth v. Hall*, supra note 10.

¹³*Stehr v. State*, supra note 1.

¹⁴*Regina v. Shepherd*, 9 Cox Crim. Cas. 123, 169 Eng. Rep. 1340, 1343 (1862).

¹⁵*Regina v. Knights*, 2 F. & F. 46, 175 Eng. Rep. 952 (Bury St. Edmund's Spring Assizes 1860); *Rex v. Izod*, 20 Cox Crim. Cas. 690 (Oxford Civ. 1904).

¹⁶*Hughes, Criminal Omissions*, 67 Yale L.J. 590, 622 (1958).

¹⁷176 N.Y. 201, 68 N.E. 243 (1903).

¹⁸*Commonwealth v. Pierson*, supra note 5 at 244.

¹⁹*Craig v. State*, supra note 1 at 690.

²⁰*Edson v. Edson*, 138 Conn. 701, 88 A.2d 371 (1952); *Tigertail Quarries, Inc. v. Ward*, 154 Fla. 122, 16 So. 2d 812 (1944); *Johnson v. Johnson*, 10 Misc. 2d 561, 169 N.Y.S.2d 97 (Sup. Ct. 1957); *Painter v. Lingon*, 193 Va. 840, 71 S.E.2d 355 (1952).

port of her husband.²¹ A husband who fails to provide proper care, necessities or medical attention to a helpless wife may be guilty of manslaughter.²² So, where a husband left his insane wife in a cold upper room with no heat and she froze to death, he was held guilty of manslaughter.²³ Where a husband and wife were returning home from a drinking spree and the wife fell into a snowbank, the husband had a legal duty to help her into the house.²⁴ Normally a husband must provide medical care if the wife needs and requests it, but he is not under an absolute duty to get medical aid if she denies a need for it.²⁵

With the exception of the duties of parent to child and between husband and wife, there seems to be no duty to act based on blood relationship alone. For example, no legal duty exists between brothers and sisters.²⁶ In the early case of *Rex v. Smith*²⁷ the court refused to find the defendants liable for homicide for neglecting to provide for a mentally defective brother who was living in the same house and to whom they were bound by their father's will to pay an annual income. Furthermore, the duties owed between a husband and wife are based on the legally recognized institution of marriage, and the law is unwilling to extend its application to cover meretricious relations. In *People v. Beardsley*,²⁸ the defendant, while his wife was away, had spent the weekend in his apartment with another woman. Realizing that the woman was in a coma as a result of taking morphine, the defendant had her carried to a basement apartment where she died for lack of medical attention. The court held that the defendant was under no legal duty to care for the woman; hence he could not be convicted of manslaughter. However, it would appear that by living together, even temporarily, and relying on one another, each had assumed a duty to act in behalf of the other.

An affirmative duty to act may also arise by contract, either express or implied. One may be held criminally liable because of a negligent failure to perform his contractual obligations. In its most obvious form this duty to act may be the subject of an express contract, as when one binds himself by contract to care for a pregnant woman during her

²¹*Hodson v. Stapleton*, 248 App. Div. 524, 290 N.Y. Supp. 570 (Sup. Ct. 1936).

²²*Westrup v. Commonwealth*, 123 Ky. 95, 93 S.W. 646 (1906); *State v. Smith*, 65 Me. 257 (1876); *Territory v. Maton*, 8 Mont. 95, 19 Pac. 387 (1888).

²³*State v. Smith*, supra note 22.

²⁴*Territory v. Maton*, supra note 22.

²⁵*Westrup v. Commonwealth*, supra note 22.

²⁶*Rex v. Smith*, 2 Car. & P. 449, 172 Eng. Rep. 203 (Gloucester Assizes 1826).

²⁷*Ibid.*

²⁸150 Mich. 206, 113 N.W. 1128 (1907).

delivery.²⁹ In addition, a duty to act may be incidental to a contract. The breach of this latter type appears to arise more frequently in cases of persons in charge of vessels,³⁰ machinery,³¹ mines and the like where a negligent omission could easily result in death. In such cases the law appears to be that there must have been an inducement to rely on precautions taken by the defendant, and there must have been a helplessness on the part of the person killed that would not have existed except for the agreement. In *Clark v. State*³² the defendant was the pit boss of a coal mine and was in full charge of the operations. He was held guilty of manslaughter for the death of ten miners due to his negligent failure to operate an exhaust fan, such negligence resulting in an explosion. Even though one does not contract personally, a duty may be imposed upon him through a contract of his employer. In such a situation the employee can be held criminally liable for failure to perform the duty.³³ Thus, where the negligence of a railroad crossing keeper caused the death of a pedestrian, the keeper was held criminally liable because the employer had assumed the duty of protecting the public.³⁴

There is a line of cases that parallels section 324 of the Restatement of Torts to the effect that anyone who, having no duty to do so, takes charge of a helpless person is liable for lack of reasonable care or for discontinuing the aid if this leaves that person in a worse condition. In *Regina v. Nicholls*³⁵ a grandmother took her deceased daughter's child into her home, although she was not bound by law to do so. She left the infant with a nine-year-old boy who failed to take proper care of it, and the child died of starvation. This is a clear illustration of a duty arising out of the act of taking charge or assuming the duty since the woman owed no duty at the outset to help the child.³⁶

²⁹State v. Lowe, 66 Minn. 296, 68 N.W. 1094 (1896).

³⁰United States v. Thompson, 12 Fed. 245 (D. Ore. 1882); United States v. Knowles, 26 Fed. Cas. 800 (No. 15540) (D. Cal. 1864).

³¹State v. Harrison, 107 N.J.L. 213, 152 Atl. 867 (Sup. Ct. 1931); Regina v. Hughes, 7 Cox Crim. Cas. 301 (1857).

³²27 Okla. Crim. 11, 224 Pac. 738 (Crim. App. 1924).

³³United States v. Van Schaick, 134 Fed. 592 (C.C.S.D.N.Y. 1904); Rex v. Pittwood, [1902] 19 T.L.R. 37.

³⁴Rex v. Pittwood, supra note 33.

³⁵13 Cox Crim. Cas. 75 (1874). The defendant was not convicted because the court felt she was not guilty of gross negligence.

³⁶It is difficult and usually unnecessary to discern whether the duty in this line of cases arises because of some kind of contract or because it was assumed. However, in the Nicholls case, if the action had been based strictly on a contract, it may easily have failed because the infant would be incapable of contracting.