case, *supra*; Moore's case, *supra*. Mr. Bishop, however, is of opinion that upon principle there can be found no such distinction in the law itself; but why he is of this opinion, he does not satisfactorily tell us. 1 Bish. Crim. Law, § 853, 5th ed. It is pretty clear that the right to kill in defence of property does not extend to cases of *larceny*, which is a crime of a secret character; although the cases which illustrate this exception are generally cases of theft of articles of small value. Thus, in *Reg.* v. *Murphy*, 2 Craw & Dix C. C., 20, the prisoner was indicted under the statute for maliciously shooting with intent to do grievous bodily harm, etc. It appeared that on the day in question, the prisoner, who was the game-keeper and wood ranger of Lord Dunsany, and armed with a fowling piece, detected the prosecutor in the act of carrying away from his employer's lands a bundle of sticks, consisting of branches severed from the growing timber by a recent storm; that the prisoner hailed him, when he dropped the sticks and ran; upon which the prisoner called out, "If you don't stop, I'll fire;" but the prosecutor still going on, the prisoner fired, wounding him in the head, back and arms. Doherty, Ch. J., said: "There is no doubt that the prosecutor, in carrying away the branches previously dissevered from the trees, was committing a felony, and the prisoner was clearly entitled to arrest him; but in discharging his gun at the prosecutor, and perilling his life, the prisoner has very much exceeded his lawful powers, and I cannot allow it to go abroad, that it is lawful to fire upon a person committing trespass and larceny; for that would be punishing, perhaps with death, offences for which the law has provided milder penalties." And see to the same effect, *McClelland* v. *Kay*, 14 B. Monroe, 106; *Gardiner* v. *Thibodeau*, 14 La. An., 723; *State* v. *Vance*, 17 Iowa, 144; *Priester* v. *Augley*, 5 Rich. (Law), 44. It may be observed, however, that the right extends to statutory felonies, as well as to felonies at common law. *Gray* v. *Coombs*, *supra*; Pond's case, *supra*; Moore's case, *supra*. And it would seem that the fact that a common law felony has been reduced by statute to a misdemeanor, does not diminish the right of defence applicable to such cases. *Gray* v. *Coombs*, *supra*; *Dreman* v. *People*, 10 Mich., 169. These cases are in accord upon this point with what is said by the learned Chief Justice in the principal case, where he says that the rule which forbids the resorting to such dangerous means for the prevention of trespasses does not depend upon the light in which the law regards the act and the punishment provided for it, but upon the limitation which the law puts upon the right of the owner of property in rendering it protection. Language of similar import was used by Nicholas, J., in *Gray* vs *Coombs*, *supra*, where he said that "a name can neither add to, nor detract from, the moral qualities of a crime; and in the eye of reason and justice, the intrinsic nature of the offence, together with the time and manner of its attempted commission, must ever test the legality of the means to be resorted to for its prevention." 7 J. J. Marsh, 483

But the ordinary rule is, that a killing to prevent a mere trespass upon property, or any asportation of or injury to it, which does not amount to a felony, is a felonious homicide; or, viewed in the light of a civil action, unlawful. *Harrison's case*, 24 Ala., 67; *Drew's case*, 4 Mass., 391; *United States* v. *Williams*, 2 Cranch, C. C., 439; *Priester* v. *Augley*, 5 Rich. (Law), 44; *State* v. *Morgan*, 3 Ired., 186; *State* v. *McDonald*, 4 Jones; (Law), 22; *State* v. *Brandon*, 8 Jones (Law), 467; *State* v. *Vance*, 17 Iowa, 144; *Gardiner* v. *Thibodeau*, 14 La. An. 733; *McClelland* v. *Kay*, 14 B. Monroe, 106. As where a person kills an officer who comes unlawfully to distrain his goods. *United States*, v. *Williams*, *supra*. Or where a person kills a slave who is stealing sugar-cane. *Priester* v. *Augley*, *supra*. Or stealing chickens, *McClelland* v. *Kay*, *supra*; *Gardiner* v. *Thibodeau*, *supra*. Or where a person kills another who lets down a dividing fence, and hauls off manure as to which there is a disputed claim. *State* v. *McDonald*, *supra*. Or kills one who is taking corn from a bin, the right to which is in dispute. *State* v. *Brandon*, *supra*. Or where a person fires among a party of boys, who are stealing his melons, and kills one of them. *State* v. *Vance*, *supra*. Or shoots and wounds a person who is carrying off branches severed from his master's trees. *Reg.* v. *Murphy*, 2 Crawf. and Dix, C. C., 20.

It is seen, therefore, that the rule that it is unlawful to set engines dangerous to life, for the defence of property against mere *trespassers*, is not only correct upon principle, as enforced by the reasoning of the principle case, but is sustained by a great array of authority; although it is possible that such means of defence are permisible to secure valuable prroperty kept in warehouses and shops against nocturnal depredators.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER, 1873, AND JANUARY, 1874.

From the American Law Review.

(Continued from page 205.)

Legacy.

1. A testatrix had a power of appointment by will over a fund held in trust for her for life. She gave "£100 of such trust funds to my nephew P.," and several other legacies in the same terms. *Held*, that said legacies were specific, and bore interest from the date of the death of the testatrix.—*Davies* v. *Fowler*, L. R. 16 Eq. 308,

2. A testatrix bequeathed to certain parties "all the money of which I die possessed." At the time of her death she held a sum in cash in her house, and she was entitled to a legacy which the executors had not paid or acknowledged as at her disposal, to the apportioned part of an annuity from the last stated day of payment, and to interest on a balance at the banker's accrued since the last time she was credited with it. *Held*, that the cash only passed by the bequest.—*Byrom* v. *Brandreth*, L. R. 16 Eq. 475.

3. A testatrix gave a legacy to "my niece L., second daughter of J. H. W." She then gave a further legacy "to each of my nieces, the said L. W.," &c., and gave her residuary estate "in trust for the said L. W." and others. The testatrix had another niece, L. F. T. W. *Held*, that evidence was not admissible to show that the testatrix intended her niece L. F. T. W. to take in the residuary bequest.—*Webber* v. *Corbett*, L. R. 16 Eq. 551.