

U. S. Rep.]

HOOKER V. MILLER.

[U. S. Rep.]

injured, he is liable in damages. *Townsend v. Watten*, 9 East, 277. But in this case it was proved to have been his intention to kill dogs by this means, as well as other animals; and several dogs having been killed in such traps, and he having allowed his game-keeper a reward of one shilling for every dog so killed.

3. *Spring-guns*.—*The American Doctrine*.—The question as to the lawfulness of the use of spring-guns in the defence of property first arose in the United States, in *Gray v. Coombs*, 7 J. J. Marshall, 478, in the Court of Appeals of Kentucky, in 1832; and it was there ruled that where a person has valuable property in a strong warehouse, well secured by locks and doors, he may, as an additional security at night, erect a spring-gun which can only be made to explode by entering the house; and if a slave in endeavoring to break into the warehouse is killed by such spring-gun, the owner of the warehouse will not be liable to the master of the slave for his value.

The question next received an exhaustive discussion in *Johnson v. Patterson*, 14 Conn. 1, decided in the Supreme Court of Errors of Connecticut in 1840: although it was not directly involved in the case. The action was for damages for poisoning the plaintiff's fowls. The defendant, to prevent the plaintiff's fowls from trespassing on his lands, as they had before done, mixed Indian meal with arsenic, and spread it upon his land, having given the plaintiff previous notice that he should do so; and such fowls coming afterwards upon the defendant's land ate the poisoned meal, in consequence of which some of them died; it was held: 1. that the previous notice, in contradistinction to notice after the fact, was sufficient; 2. that notwithstanding such notice, the defendant was not justified in the use of deadly means, and consequently was liable in damages. And, the right of an owner to defend his property in his absence, by means of engines or poisons placed so as to kill or injure trespassing men or animals, was discussed at length upon principle and in view of the English authorities, and it was held, that no such right exists in Connecticut. But the doctrine of this case was limited to cases of trespasses merely. What may be done to prevent burglary or felony, was admitted to be governed by other rules.

The question appears next to have arisen in *State v. Moore*, 31 Conn. 479, determined in the Supreme Court of Errors of Connecticut, in 1868. The defendant was indicted for a nuisance in placing spring-guns in his blacksmith shop so as to endanger passers-by on the highway. The jury, by a special verdict, found that the defendant placed spring-guns in his shop for its protection against burglars, that the guns were loaded with large shot, and so placed as to discharge their contents obliquely towards the highway, the travelled path of which was about a rod and a half from the shop; that the shop was lathed and plastered on the inside and double-boarded on the outside, but that it was possible that scattering shot might pass through the boards at places where, by reason of the cracks between them, there was not a double thickness of boards; and that the travelling public were annoyed and apprehensive of harm from the guns. It was held, that it did not appear that there was such real and substantial danger to the public as to warrant a conviction.

Concerning the right of resorting to spring-guns for the purpose of protecting property, the court reason, that the mere act of setting spring-guns on one's own premises for their protection, is not unlawful in itself, but the person doing it may be responsible for injuries caused thereby to individuals, and may be indictable for the erection of a nuisance, if the public are subjected

by it to any danger; that what a man may not do directly, he may not do indirectly: that a man may not, therefore, place instruments of destruction for the protection of his property, where he would not be authorized to take life with his own hand for its protection; that the right to take life in defence of property, as well as of person and habitation, is a natural right, but the law limits its exercise to the prevention of forcible and atrocious crimes, of which burglary is one; that in the absence of any statutory provision-making it burglary to break and enter a shop in the night-time, with intent to steal, and by the early strict rules of the common law, a man may not take life in the prevention of such a crime; but that the habits of the people and other circumstances have so greatly changed since the ancient rule was established, that it is very questionable whether, in view of the large amount of property now kept in warehouses, banks, and other out-buildings, it should not be held lawful to place instruments of destruction for the protection of such property; that breaking and entering a shop in the night-season with intent to steal, is, by the law of Connecticut, burglary; and that the placing of spring-guns in such a shop for its defence, would be justified, if the burglar should be killed by them; that the guns would, however, constitute a nuisance if they cause actual danger to passers-by in the street; but that the danger to the public must be of a real and substantial nature.

4. *Limit of the Right to defend one's Goods*.—If we adopt the conclusion of the Connecticut case last above quoted, that what a man may not do directly, he may not do indirectly, the question involved in the principal case will be found to have been settled by a great weight of authority. That a person is not obliged to surrender the possession of his goods, his lands or other property to a wrong-doer without resistance, does not admit of question. *People v. Hubbard*, 24 Wend. 369; *Curtis v. Hubbard*, 1 Hill, 336; S. C., 4 Hill, 437; *Commonwealth v. Kennard*, 8 Pick, 138, 137; *Commonwealth v. Power*, 7 Metcalf, (Mass.) 596; *People v. Henshall*, 10 Cal. 87; *Harrington v. People*, 5 Barb. 611, 612; *McAuley v. State*, 3 G. Greene, 435; 1 Bish. Crim. Law, § 861, 5th ed. He may by the doctrine of these, and all the cases where the rule is stated, use, within a certain prescribed limit, as much force as is necessary to preserve his possession—taking care the degree of force used does not exceed what is necessary, or what reasonably appears to be necessary, for the purpose of defence and prevention. The limit here spoken of, is the limit at which it becomes necessary to take or endanger life, in order to protect one's possession. And here the criminal law, which seeks certainty in its rules as far as possible, divides offences against property into two general classes, namely, felonies and trespasses, for the purpose of determining whether a killing in prevention of such offences shall be deemed justifiable or culpable.

And the first rule which may be stated is, that a killing which is necessary, or which reasonably appears to be necessary, to prevent a forcible and atrocious felony against property, is justifiable homicide. *Pond v. People*, 8 Mich., 150; *People v. Payne*, 8 Cal., 433; 1 East P. C., 273; *Roane*, 2 Deyereaux, 58; *Gray v. Coombs*, 7 J. J. Marsh, 478; *State v. Moore*, 31 Conn., 479; *Johnson v. Patterson*, 14 Conn., 1. This rule, the common law writers limit to cases of secret felonies or felonies not accompanied with force. 1 Hale P. C., 483; 1 East P. C., 273; Foster, 274. Though we do not find this distinction adjudged in any modern case which we have seen, yet it has been quoted with approbation in several, *Rond's*