siderable violations of the law, are not to be visited by barbarous punishments, or prevented by inhuman infliction of bodily injuries. The instruction of the court directing the jury that the doctrine of contributory negligence was not applicable to the case, is therefore correct.

It is our opinion that the jury were properly instructed, and that the instructions asked by defendant were correctly refused.

(Note by Editor of *Central Law Journal.*)

1. *Defence of Property by Spring-guns—The English Rule.*—The question whether the owner of property may lawfully resort to the use of spring-guns and engines of like character, for protecting it in his absence, against trespassing men or animals, is somewhat novel in this country. The question first arose in England in 1817, in the Common Pleas, in *Deane* v. *Clayton*, 7 Taunt. 489. The defendant, who was the owner of a wood, had fixed to the trees what were commonly known as dog-spears, being iron spears fastened to the trees past which the hares were accustomed to run, placed at such a height that while the hares would pass under them, dogs and foxes pursuing the hares would run against them, and be killed. The defendant had posted notice that such spears were set in the wood. The plaintiff being engaged in hunting in the wood with a valuable dog, the dog made his escape from him, and, pursuing a hare, ran against one of the spears and was killed. The judges were equally divided as to whether the plaintiff ought to recover damages, and so no result was reached. Three years later, in the leading case of *Ilott* v. *Wilkes*, 3 Barn. & Ald., 304, (cited in the principal case), the question came before the King's Bench upon the following state of facts: The defendant had placed spring-guns in a wood owned by him, and had posted notices that such guns were so set. Nevertheless, the plaintiff entering the wood to gather nuts, trod upon a wire connecting with one of them, by which it was discharged, and he severely wounded. The question received an exhaustive dicussion, and all the judges agreed that the plaintiff could not recover. In both of these cases the plaintiff had *notice* of the existence of the engines which caused the injury: and in both cases the judges were agreed that, had there been no notice, the plaintiff would be entitled to recover, and that without notice it would not be lawful to expose even a trespasser to mortal injury. And agreeably to this view, in a subsequent case —*Bird* v. *Holbrook*, 4 Bing. 628, (cited in the principal case—where the defendant for the protection of his property, some of which had been stolen, set a spring-gun, *without notice*, in a walled garden, at a distance from his house, by which the plaintiff, who had climbed over the wall in pursuit of a stray fowl, was shot, it was held that the defendant was liable in damages, on the ground that there had been no notice: but the correctness of this ruling is doubted in *Jordin* v. *Crump*, 8 Mees. & Wells, 789. So in *Jay* v. *Whitefield*, an unreported case, cited in 3 Barn. & Ald. 308, and in 4 Bing. 644, the plaintiff, a boy, having entered the defendant's premises for the purpose of cutting a stick, was shot by a spring-gun, for which injury he recovered £120 damages; but it does not appear whether or not notice had been given in this case.

The reasoning upon which *Ilott* v. *Wilkes* proceeded was, that since the plaintiff had *notice* that there were spring-guns set in the wood, the act of discharging the one which caused the injury to him, was his own act, and not the act of the defendant. The fallacy of this reasoning is conclusively shown by SHERMAN, J., in *Johnson* v. *Patterson*, 14 Conn. 1, where the reasoning of Justice HOLYROYD is said to involve the proposition that a man is not responsible for not guarding against the *intended* consequences of his own *innocent* act; and, if he does not, that shall be considered as *his own act*, which is the act of *another*. The reasoning of the judges appears to have been little better than mere sophistry, intended to clothe with some color of legal reason a barbarous rule of law, which really had its foundation, like the English game laws, in feudal and aristocratic policy—a policy which has no existence in this country. And, it is to be said to the credit of the English legislature, that very soon after the determination of this case, the rule declared by it was abolished by statute, 7 and 8 Geo. 4, ch. 18; and this statute has been substantially re-enacted in the 24th and 25th Vict., ch. 100, § 31, by which it is declared, in substance, that whosoever shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same, or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor, and, being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years, 27 [and 28 Vict. ch. 47.] or to be imprisoned for any term not exceeding two years, without hard labor. And by the subsequent provisions, whosoever shall knowingly and wilfully permit such traps to be set, is deemed to have set them himself; provided this act shall not apply to traps set to destroy vermin, nor to engines set at night for the protection of dwelling-houses.

But, notwithstanding this statute, the English judges seemed disposed to favor the practice prohibited by it as much as possible. Thus in *Wootton* v. *Dawkins*, 2 Com. Bench, N. S. 412, the plaintiff entered the defendant's garden at night without his permission, to search for a stray fowl, and, whilst looking closely into some bushes, he came in contact with a wire, which caused *something* to explode with a loud noise, knocking him down and slightly injuring his face and eyes. It was held—1. That the defendant was not liable for this injury at common law. 2. That in the absence of evidence that it was caused by a spring-gun or other engine calculated to inflict grievous bodily harm, he was not liable under the 7 and 8 Geo. 4, ch. 18 § 1.

2. *Dog-Spears—The English Rule.*—The question left unsettled in *Deane* v. *Clayton*, *supra*, as to the right to protect game in parks by means of dog-spears, was finally resolved in favor of the right, in *Jordin* v. *Crump*, 8 Mees. & Wells, 782, where the rule was laid down that a person passing, with his dog through a wood, in which he knows dog-spears are set, has no right of action against the owner of the wood, for the death or injury of his dog, who, by reason of his own natural instinct, and against the will of his master, runs off the path against one of the dog-spears, and is killed or injured; because the setting of dog-spears was not in itself an illegal act, nor was it rendered so by the 7 and 8 Geo. 4, ch. 18.

In a case earlier than any of the above, it was held that if a man place dangerous traps, baited with flesh, in his own ground, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept on his neighbor's premises, must probably be attracted by their instinct into the traps; and if, in consequence of such act, his neighbor's dogs are so attracted, and thereby