way, an immaterial factor, except in those cases where it is of that reckless and wilful character which is assimilated to fraud for reasons fully explained in *Le Lievre* v. *Gould* (*e*) and other cases. What persons are entitled to recover damages for fraud is a question which falls outside the scope of the present article (*f*).

VII. The next doctrine to be noticed is one which is referable to the conception that specially stringent obligations are incurred by those who undertake to deal with material substances of certain classes.

(E). A person who uses or leaves about in such a way as to cause danger an instrument which is dangerous in itself is liable independently of contract, to anyone who is injured thereby.

This proposition closely follows the words of Romer J. in *Scholes* v. *Brook* (*a*), expressly approved by Lord Justice Bowen in *Le Lievre* v. *Gould* (*b*). The doctrine which it embodies is apparently traceable to *Dixon* v. *Bell* (*c*), 198, where the injury was caused by the carelessness of the defendant's messenger in handling a loaded gun. Yet it seems very dubious whether the court which decided that case intended to do more than apply the principle that consummate care is obligatory in dealing with specially dangerous articles The gist of the ruling is merely that the jury was justified in finding that the defendant did not take the precautions which a prudent man would have taken in a case where a young and thoughtless girl was sent to fetch a gun known to be loaded, the view of Lord Ellenborough being that the message to the person in charge of the weapon should at least have instructed him to draw the charge instead of the priming merely. The defendant being delinquent in this respect, the case becomes simply one of an agent's negligent execution of negligent instructions, the result of which would of course be to fasten a joint and several liability both upon the principal and upon the agent. In view of the subsequent development of the law on this subject, however, the correct construction of this

(*e*) (1893) 1 Q.B. 493.

(*f*) It may, however, be noted that in *Barry* v. *Croskey* (1861) 1 John & H. 1 Vice-Chancellor Page-Wood considered that the plaintiff in *Langridge* v. *Levy*, supra could not have recovered, if he had been a stranger who had found the gun lying about in some public place, and relying on the name which he saw imprinted on it, had fired it off.

(*a*) 61 L.T.N.S. (1891) 837.

(*b*) (1893) 1 Q.B. 493.

(*c*) 5 M. & S. (1816) 198.