actually necessary to prevent the trespass. The *State* v. *Vance*, 17 Iowa, 138. The rule is based upon the consideration that an act of violence done to prevent trespass which causes death, is beyond the provocation, and the perpetrator is guilty of murder. If the intention was not to take life, or the act was done in the heat of passion, the offence would be extenuated, and become no more than manslaughter.

Under the law, at the time of the killing, for which defendant was convicted, in the case just cited, a trespass of the character of the one committed by the person killed, which was not different from the act of the plaintiff in this case pleaded by the defendant as a justification, was not punishable as a misdemeanor. But this fact cannot defeat the application of the rule of the case now. The rule is based, not on the light in which the law regards the act and the punishment provided for it. The criminality of the act, or the turpitude of the trespasser is not the foundation of the rule. But it is based upon the limitation which the law imposes upon the right of the owner of property in rendering it protection. He cannot prevent a trespass by using means dangerous to life. Now, if the act of the trespasser is punishable as a misdemeanor, that fact does not demand greater violence, or more dangerous means, to secure protection, than if the same act were regarded as a mere trespass and not a crime. In other words, it requires no more violence to protect property from a trespasser when there is a statute punishing him criminally, than it would in the absence of such an enactment.

The act of defendant, we conclude upon the authority cited and upon principle, in preparing the means whereby the plaintiff's life was endangered, and from which he sustained great bodily injury, was unlawful. It follows in the application of familiar doctrines, which do not demand the support of authority to secure their recognition that he is liable for the injury inflicted upon plaintiff.

It has been held in England that a trespasser, having notice that spring-guns are laid upon the premises, cannot recover in an action against the owner thereof, for injuries sustained thereby. *Ilott* v. *Wilkes*, 3 Barnewall & Alderson, 304. And that when a trespasser, without such notice, is injured in the same way, he may recover in such an action. *Bird* v. *Holbrook*, 4 Bingham, 628. So the owner of a vicious dog is liable for injuries sustained by a trespasser, from being bitten by such dog. *Shirfy* v. *Bartley*, 4 Sneed, 58. In New York the same doctrine, with modifications on the side of humanity, has been recognized. It has been there held that the nature and value of the property ought to be such as to justify the use of means for its protection which are dangerous to life, and that the trespasser must have full notice of the mischief, in order to exempt the owner from liability for injuries inflicted. *Loomis* v. *Terry*, 17 Wend. 496.

Whether notice to the trespasser of the dangerous contrivances laid for the protection of property would relieve the owner of liability for injuries caused thereby, we do not determine, as the facts before us do not involve that question, no such defence having been made in this case. The authorities that have come to our notice seem to recognise such a rule.

It has been often held that it is no justification for killing animals, that they were trespassing upon another's premises, or doing injury to his property. *Ford* v. *Taylor*, 4 Texas, 492; *Tyner* v. *Cory*, 5 Ind. 216; *Wright* v. *Ramscot*, 1 Saund, 83.

This rule is doubtless supported upon the consideration that the protection of one's property will not justify the resort to means that are destructive to the property of another, when not demanded by necessity, or the nature of the rights and property concerned. Certainly, humanity requires that a like rule be extended to the person of a trespasser, and that he be not exposed to bodily injury or death, on the mere ground that he is, at the time, acting in violation of law.

II. The defendant insists that under the rule, *in pari delicto*, or of contributory negligence, the plaintiff cannot recover If the case be regarded as one of simple negligence on the part of defendant, plaintiff could not be held to the exercise of care, and, in its absence, of contributing to the injury, by his own negligence without having notice of the dangers to which he would be exposed. He could not be regarded as wanting in care, by failing to use means for his protection, from dangers unknown to him, or in exposing himself thereto. The rule *in pari delicto*, affords no protection in a civil action, to a party who has control of dangerous implements and negligently uses them or places them in a situation unsafe to others, whereby another person, without knowledge thereof, is injured, although, at the time, in the commission of a trespass.

This qualification of the rule is demanded on the ground that proper regard for life and the person of others requires care, on the part of persons using deadly weapons and dangerous implements, that injury to others may not be inflicted, and that mere trespasses and other incon-