

FLOTSAM AND JETSAM.

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MOOT CASES IN CRIMINAL LAW.—The following is translated from a collection of moot cases in criminal law, just published by Dr. Bar, a very eminent German lecturer and jurist :

A., with the intention of shooting his mistress, Maria H., entered, armed with a loaded pistol, the house in which Maria H. lived. Not finding her alone, he waited until she left the chamber where she was. When she came out he addressed her, and, after a short conversation, pointed the pistol at her breast. His intention was to kill her ; but the firing of the pistol was not his immediate act, but was caused by the pistol being struck by her. Is he responsible for murder ? Can it be charged that the pistol was fired by *him*, when it was really fired by *her* ?

A. saw a hawk hovering over his house, and, after shooting it, leaned the gun, one barrel still undischarged, against a neighbouring wall. Two persons soon passed by this wall. B., one of them, a day labourer, took the gun, and playing with it negligently, shot and killed his companion. Is B. indictable for negligent homicide ? Is A. indictable for the same offence ?

M. left on a table of his chamber a loaded pistol. Two sons of A.'s landlord, who were sometimes accustomed to visit M.—one of them, W., being eleven years old, and the other, H., eight years old—entered the chamber in his absence. In playing with the pistol, H. shot his brother W. Is M. indictable for negligent homicide.

A servant is working at the closet in which our guns are placed. Are we bound, in order to relieve ourselves from negligent homicide, in case he carelessly shoots himself, to notify him that the guns are loaded ? If a person, who is not a good horseman, is determined to mount one of our horses, are we bound to advise him if the horse is skittish ? Suppose that A., knowing B. not to be an experienced rider, and also knowing the restiveness of the horse, on being asked by B. what kind of a horse it was, should answer : " You tell me you are an experienced rider ; why should you hesitate to try the horse ? " Is A. responsible in case of B. being thrown and injured ? Would responsibility, in such a case, be modified by the circumstance that the unfortunate rider was met by an angry dog, or an organ grinder ; or that a crowd of idlers, struck by B.'s ludicrous appearance, greeted him with noises which disturbed the horse ?

At a convivial party a large goblet was filled with grog. It was agreed that each person should take a drink, and that the last person reached should finish what remained. By an understanding in the party, this duty uniformly fell to G. ; and it so happened that he had occasion sometimes to drink half the goblet. G., at the outset, discovered the trick ; but confiding in his own powers of endurance, he went on drinking. He was soon so much affected that he fell into a condition in which he mechanically drained the cup whenever it was presented to him. G. became mad with drink ; and when in this condition, inflicted on an innocent stranger visiting the place a serious wound. Is G. exclusively responsible, or are those who had stimulated G.'s drunkenness jointly responsible ? Would it make any difference if G. had not perceived the trick played on him, but had been its unconscious victim ?

On a summer's afternoon a great crowd pressed into a ferry-boat crossing the river at the town of X. As the boat came near a steam-boat, which was navigating the river, and was caught in the swell, an old lady in the ferry-boat called out : " Good Lord, the boat is upsetting." In consequence of this alarm, a number of persons, sitting on one side of the ferry-boat, rushed to the other side, upsetting the boat, so that several were drowned. Was the old lady responsible for the homicide, which, but for her rashness, would not have taken place !

The parents of trusts were *fraud and fear*, and a court of conscience was the *nurse*.—*Attorney-General v. Sands*, Hard. 491, quoted in *Perry on Trusts*, 1. 3, note.

Scroggs, Chief Justice—" As anger does not become a judge, so neither doth pity, for one is the mark of a foolish woman, as the other is of a passionate man."—*The King v. Johnson*, 2. Show. 4.

The old English lawyers occasionally rejected the evidence of women on the ground that they *are frail*. Best Ev. 1. 64, citing Fitzh. Abr. Villenage, pl. 37, Bro. Abr. Testimoignes, pl. 30.

" Judgment was given against a man of 40 years of age, and he brought a writ of error, and he assigned infancy for error, and the attorney was punished by the Court." Per Holt, C. J., in *Pierce v. Blake*, 2 Salk. 515.