

legal right, but it is not likely that the courts would draw so fine a distinction between this case and that of an owner protecting his property, and therefore the act of shooting at a trespassing aviator, or even merely of pointing a gun which the owner knew to be loaded, would be the commission of a criminal offence, and of an act of unnecessary violence.

(b) If the result of the shooting were fatal, the owner would be guilty of manslaughter, even if it is assumed in his favour that no offence under 24 & 25 Vict. c. 100, has been committed.

It is a principle familiar to all that every criminal offence involves the mental condition of a "vicious will" or "intention," and that there must be some form of mens rea, i.e., the wrongdoer must (1) be able to "help doing" what he does, (2), know that he is doing a criminal act, and (3), every sane adult is presumed to foresee and to intend the natural consequence of his conduct. Assuming that the owner has the right to eject trespassers, and that he has used the only force which can under the circumstances be used by him, it would be idle for the owner to argue that he did not know that a fatal accident might result, or that it is impossible to foresee such a contingency arising, or that, taking everything into consideration, such as the care with which he had fired at the aeroplane, and that he had warned the aviator of his intention to shoot, he had not in law intended the natural consequences of his act.

But the opinion has been expressed by Denman, J., in *R. v. Prince*, L.R. 2 C.C.R. 154, that criminal liability may exist even where there is an intention to do some act which is wrong, even although it does not amount to a crime; whilst Bramwell, B., giving judgment in the same case, actually went so far as to say that the intention to commit an act only morally wrong was sufficient mens rea.

However much this latter view may be questioned, it is clear that criminal liability exists where there is an intention to commit a crime, even although it is not the particular crime in fact committed or where there is an intention to do a tortious or wrongful act which yet falls short of a crime. To shoot with