

U. S. Rep.]

HOOKER v. MILLER.

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again after it has been considered by another Court. I remember a case from the North of Ireland, in which, in like manner, a question arose and the Court made a decision. The same question was brought before us in another case, but as we heard that the principle involved in that case was to be argued in a case that was about being discussed in the Common Pleas, we postponed pronouncing our decision in the case to which I have referred, till we had ascertained how the Common Pleas had determined. If the Common Pleas dissented, we would have reconsidered our views; but as the decision to which they came was in conformity with our judgment, we would not permit the question to be re-agitated. But if *Kelly v Dixon* should be dissented from—I do not refer to mere loose expressions of disapprobation—we shall willingly reconsider it.

Order made absolute.

UNITED STATES REPORTS.

SUPREME COURT OF IOWA.

GEORGE HOOKER, BY HIS NEXT FRIEND, ETC., v.
JOHN MILLER.

Defence of Property by Spring-Guns.

1. *Spring-Guns—Trespassers.*—Where the owner of a vineyard sets a spring-gun, so arranged with cords or wires, that a trespasser coming into the vineyard will by coming in contact with such cords or wires discharge the gun and receive injury therefrom, and gives no notice of having such spring-gun in his vineyard, and a trespasser entering the vineyard, comes in contact with such cords or wires, whereby the gun is discharged, and he receives injury, the proprietor is liable in damage to the trespasser.

2. — *In pari delicto.* The rule *in pari delicto* does not apply in such cases.

3. — *Notice.*—Whether notice that such a contrivance had been laid for the protection of the property, would justify the resort to such means, the court do not determine.

[Central Law Jour., Jan. 29, 1874.]

Action to recover damages resulting from injuries sustained by plaintiff from a gun-shot wound received by him by means of a spring-gun placed by defendant on his own premises. There was a verdict and judgment for plaintiff: defendant appeals. The facts of the case appear in the opinion.

S. P. Vanatta, I. M. Preston & Son, for appellant; *Thompson Davis and Nichols*, for appellee.

BECK, CH. J.—The defendant was the owner of a vineyard, and had lost grapes by trespassers entering his enclosure and carrying them away. To protect his fruit from such persons, he planted

a spring-gun, so arranged that it would be discharged, in the direction of one entering his premises, by means of wires or cords, which the trespasser would be likely to come in contact with and disturb. He gave no notice whatever that he had so arranged the gun, or of his intention so to do. The gun being thus placed, and charged with powder and shot, the plaintiff, in the night-time went into the vineyard, without defendant's permission, and received a severe wound from discharging the gun, through the arrangements provided for that purpose. The plaintiff testifies, that his object in entering the premises was, to ask permission of the defendant to take some grapes. But it may be conceded for the purpose of this case, that he entered with the intention of wrongfully taking the fruit without the plaintiff's permission. The court instructed the jury, in effect, that if defendant had set the gun in such a way as to destroy life, or do great bodily harm, of which the plaintiff had no knowledge, and the plaintiff in entering the premises for the purpose of taking grapes, without defendant's permission, was wounded by means of the gun, he is entitled to recover; that the act of plaintiff in that case was but a misdemeanor, and would not justify its resistance by means that would take life, or do great bodily harm; that defendant had no right to use a spring-gun, for his protection against a mere trespasser, without notice to him, and the defendant's liability, on account of the wound caused by the spring-gun, is the same as though he had discharged it with his own hands.

The giving of these instructions, and the refusal of others presenting a conflicting doctrine, constitutes the foundation of the errors assigned by defendant.

I. The act of the plaintiff entering defendant's vineyard in the night-time, conceding that it was for the purpose of taking grapes without permission, is a misdemeanor. Acts 12 Gen'l Ass. Ch. 74; § 2, Code § 3898. But the defendant had no right to prevent or resist the trespass of the plaintiff by using means dangerous to life or by inflicting great bodily injury. In doing so he violated the law, and became liable for injuries sustained by plaintiff, under the doctrine that all injuries inflicted by one, while acting in violation of the law, will support an action in favor of the injured party against the perpetrator. This court has held that a mere trespass against property other than a dwelling, is not a sufficient justification to authorize the use of a deadly weapon by the owner in its defence; and that, if death results in such a case it will be murder, though the killing be