

ported in 1 Wallace Jun. 1, in which sailors threw passengers overboard to lighten a boat, and it was held that the sailors ought to have been thrown overboard first, unless they were required to work the boat, and that at all events the particular persons to be sacrificed ought to have been decided on by ballot, by which, I suppose, they meant by lot. I cannot subscribe to the authority of this case. Besides, it would be inapplicable to the present, because here the notion of deciding by lot was rejected. The learned American judge, in giving his reasons, said: 'That the selected should be by lot, as it would be an appeal to Providence to choose the victims.' Such a reason would seem almost to verge upon the blasphemous. I cannot but consider that the taking of human life by appealing to the doctrine of chance would really seem to increase the deliberation with which the act had been committed. That American case, however, was a charge, not of murder, but of manslaughter, on the ground of the failure, on the part of the prisoners, to discharge the statutory duty of preserving the life of a passenger. The question has been considered by the Criminal Code Bill Commissioners in their report, in which, discussing this doctrine, they say:—

'Casuists have for centuries amused themselves, and may amuse themselves for centuries to come, by speculation as to the moral duty of two persons in the water struggling for the possession of a plank capable of supporting only one. If ever a case should occur for decision in a Court of justice, which is improbable, it may be found that the particular circumstances render it easy of solution. We are certainly not prepared to suggest that necessity should in every case be a justification; we are equally unprepared to suggest that necessity should in no case be a defence. We judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.'

And my brother Stephen, in his 'History of Criminal Law,' observes that this doctrine is one of the curiosities of the law, and so far as he is aware is a subject on which the

law of England is so vague that, if cases raising the question should ever occur, the judges would practically be able to lay down any rule which they considered expedient. I do not derive much assistance from either of the cases, or from the report of the Criminal Code Commissioners, and I am therefore obliged to tell you what, in my judgment, after careful consideration, I deem to be the law of England. Deliberate homicide can be justifiable or excusable only under certain well-recognized heads—cases where men are put to death by order of a legally constituted tribunal in pursuance of a legal sentence; cases where the killing is in advancement of public justice, as, for instance, criminals escaping from justice, resisting their lawful apprehension, and other such cases enumerated by Blackstone, vol. iv. 48. So also where homicide is committed for the prevention of any forcible and atrocious crime; again, where men, in the discharge of their duty to their country and in the service of their queen, kill any of the enemies of their queen and country; and, lastly, where an individual, acting in lawful defence of himself or his property, or in the reasonable apprehension of danger to his life, kills another. It is obvious that this case falls under none of these heads. The illustration found in the writers upon civil law, which is alluded to in 'Cicero de Officiis,' and mentioned by Lord Bacon in his 'Elements of the Law,' and which is quoted in some legal works as the ground of the doctrine of necessity, is placed by Blackstone under the latter head—of self-defence. He says: 'Where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, he who thus preserves his own life at the expense of another man's is excusable from unavoidable necessity and the principle of self-defence, since their both remaining on the same weak plank is a mutual though innocent attempt upon and endangering of each other's life.' But Sir William Blackstone, in another part of the same volume, points out that under no circumstance can an innocent man be slain for the purpose of saving the life of another who is not his assailant; and he says, there-