

It is understood that the owner, the captain, the mate, and the pilots are in custody and are to be tried for the crime of manslaughter. It is charged that owing to the unsafe and dangerous state of the vessel which had been several times previously on fire to the knowledge of the owner and officers, that the lives of hundreds were jeopardized, and the lives of at least two hundred and fifty destroyed. It is averred that the owner purposely neglected to have the vessel, including the engine, inspected according to law, and the captain, though knowing the unsafe state of both, continued to sail the vessel. It is known that in consequence of the burning of the vessel a great number of persons were killed by burning and drowning. These are the assertions. Let us for the purpose of this dissertation presume them to be true. Are the owner, captain, mate, and pilots or any of them liable to be proceeded against as criminals? One useful test of crime is the intention of the party accused. This brings us to the distinction between acts of commission and of omission, in the former of which it is at all times more easy to reach the intention than in the latter. The burning of the Montreal was the result of an act either of commission or of omission or of both combined. Loss of life was the direct consequence of that burning. To run a vessel knowing her to be dangerous to life is an act of commission. To neglect to make her safe is an act of omission. The act of which the public complain in this case was not one of pure commission or of omission; but probably a union of both partaking more of the latter than the former. If the owner and officers of the Montreal designing to destroy the lives of the passengers received them on board of an unsafe vessel, the owner and officers would be guilty of murder. So if with a like design they purposely omitted to put the vessel in a safe condition. Thus it appears that murder may arise out of an act either of commission or of omission and under circumstances of both united. Murder, however, is not merely an unlawful killing, but a killing with malice, aforethought. It is not likely that any steamboat owner, captain, mate or officer would kill several hundreds of his passengers with malice aforethought. Still there are offences against the person of grave enormity into which malice as a motive does not at all enter. Of these manslaughter the crime next in degree to murder and nearly allied to it is the most prominent. The general doctrine

seems well established that that which constitutes murder when of malice aforethought constitutes manslaughter when arising from culpable negligence: (*Reg. v. Hughes*, 29 *Law Times*, Rep. 266.) Whether the owner or officer of a vessel intentionally or carelessly do that which he ought not to do or neglect to do that which he is bound to do he is at least guilty of negligence. Either of these propositions involves a duty to be executed in the performance or non-performance of something present to the mind of the person and understood by him. There are duties which the statute law and others which the common law imposes upon steamboat owners and officers. It is their duty by statute to cause the hull of the vessel to be inspected by the proper officer in that behalf once at least in every twelve calendar months, and to cause the boiler and machinery to be inspected at least once in every six calendar months: (14 & 15 Vic., cap. 126, s. 7.) It is also their duty by Statute to carry certain lights, (*Ib.* s. 1), to have fog bells and ring them when in a fog, (*Ib.* s. 2), to carry fire engines and proper hose, (*Ib.* s. 10) to have in a conspicuous place a steam gauge properly constructed, (*Ib.* s. 8), and such like. These are duties certain and defined, and if neglected cannot escape the description of culpable and gross negligence. It is, in fact, provided with reference to the foregoing duties that "if any damage to any person or property shall be sustained in consequence of the non-observance of any of the provisions contained in this Act the same shall in all Courts of justice be deemed, in the absence of proof to the contrary, to have been caused by the wilful default of the Master or other person having charge, &c.," and that "the owner thereof in all civil proceedings, and such master or other person in all proceedings whether criminal or civil shall be subject to the legal consequences of such default:" (*Ib.* s. 11.) It is not for us to say whether the rumor that the Owner and Captain of the Montreal neglected to comply with one or other of the foregoing statutable duties. We can only say that if these persons did, or any others for the future do so, the Statute is extensive enough to seize and strong enough to punish them. A recent Statute imposes additional duties on the owners and captains of steamboats "for the security of the lives of passengers," (20 Vic. c. 34), but as the principal of these duties are not to be obligatory until 1st April, 1858, we do not at pre-