

SELECTIONS.

"The first and sixth instructions given for the State correctly declare the law, and taken altogether announce this doctrine: That in order to find a person guilty of manslaughter in the fourth degree it is sufficient to show that the shooting, though unintentionally done, was the result of negligence in handling firearms, indicating on the part of such person a carelessness or recklessness incompatible with a proper regard for human life. Mr. Bishop says, 'there is little distinction, except in degree, between a positive will to do a wrong and an indifference whether wrong is done or not, therefore, carelessness is criminal.' Thus, if a person by careless and furious driving unintentionally run over another and kill him, it will be manslaughter; or if one in command of a steamboat, by negligence or carelessness, unintentionally run down a boat, and a person therein is thereby drowned, the act is manslaughter: 1 Bishop Crim. Law, §§ 313, 314 and cases cited. Or if a person points a gun without examining whether it is loaded or not, and it happens to be loaded and death results, he is guilty of negligence and manslaughter: *Reg. v. Jones*, 12 Cox C. C. 628. So, also, if death ensues from discharging a loaded gun at night into a public highway, whether any person is in sight or not, the act being one of gross carelessness, calculated to endanger the lives of persons passing along the street: *People v. Fuller*, 2 Park. Crim. Rep. 16. In another case a revolver was found in the road with one load in it; six months thereafter repeated attempts failed to discharge it, or to remove the load; over four years thereafter the defendant, in sport, endeavouring to frighten a woman with the revolver, it was discharged, and killed her, and the defendant was held rightly convicted of manslaughter: *State v. Hardie*, 47 Iowa, 647; S. C., 29 Am. Rep. 496. These authorities abundantly support the instructions we have commented on; none of them show such a degree of carelessness and disregard of consequences as that exhibited in evidence in this record. We are not aware that any one heretofore in this State has been prosecuted for manslaughter upon similar circumstances to those which the record presents. And yet we may judge, from the reports of the daily press, instances are not unfrequent within our borders where human lives are sacrificed by playful carelessness in handling firearms." See remarks on Frayne tragedy, 26 Alb. L. J. 461.—*Albany L. J.*

THAT the common law rule that the recovery in an action for damages is based upon pecuniary injury actually sustained, is inadequate to the ends of exact justice, is evident from the fact that in several classes of cases it is allowable for the jury, after infinitesimal pecuniary loss has been proved, to proceed to render a verdict based upon the plaintiff's injured feelings and mental sufferings. Such are cases of libel and slander, seduction and criminal conversation, and many negligence cases. It is unquestionably a misfortune that the law should be compelled to pursue the by-ways of indirection in order to reach the ends of justice, and the ugly features of this evil are never presented in a stronger light, than when seen through the circumstances of some particularly "hard case," which rests just across the dividing line and embodies all the elements requisite for a recovery, save only the formal one of some slight pecuniary loss. Such a one was the case of *Gulf etc. R. Company v. Levy*, recently decided, and very correctly decided by the Supreme Court of Texas. It was alleged that while plaintiff's son and his son's wife were in the country, his son's wife was taken violently sick and gave birth to a child, and that she died on the evening of the 30th of September, and that the child died soon after; that plaintiff's son was among strangers, without money and in desperate need of assistance and help from plaintiff; and that immediately upon the death of his child he delivered a telegram to defendant, paying the charges thereon, and informing him of the importance of its prompt transmission and delivery. That defendant failed to deliver it until after the lapse of twenty-four hours; that by the delay plaintiff was prevented from going to his son's assistance and from supplying him with money; that his son was compelled to borrow money from strangers, and was deprived of the presence of his father and mother in his sore trial, and was compelled, a stranger in a strange land, to be the only mourner at his wife and child's funeral; that plaintiff had suffered the keenest disappointment and sorest grief at being deprived of the privilege of being present at the burial of his daughter-in-law and grand-child, and of relieving his son's wants. A demurrer to the petition was sustained, and very properly. And yet if it had appeared that plaintiff had sustained pecuniary damages to the amount of 25c. as the consequence of defendant's negligence a very different conclusion might have resulted.