

ESCAPE.

Drawing her to a fence corner he covered her with brush, took possession of the shoes she had just purchased from the store, with the other articles, and made his escape, meeting with Kunkel, and caused suspicion to be cast upon him as stated. Mr. Kunkel has lived to a good old age in the community, respected by all, the dark cloud of suspicion once resting upon him having been happily cleared away.—*Washington Law Reporter*.

ESCAPE.

We have long thought that to punish a prisoner for escape, is a refinement of cruelty. To escape from restraint is an instinctive impulse. We see it in the smallest children. Man but obeys his natural promptings in breaking gaol. Why should society punish him for it? Why should an officer of justice be justified in pounding to a jelly or in shooting to death an escaping prisoner, charged with felony, if he cannot otherwise prevail on him to stay? Why may not society just as logically punish him for not having voluntarily given himself up to justice, as for trying to get away when justice has overtaken him? If a man cruelly whips a runaway horse, or tortures a squirrel recaptured after escape from his revolving cage, or a runaway dog which sees preparations for putting him to churn, Mr. Bergh will be on his track very quickly. Why punish a man for himself obeying the same instincts? It may be said, because he knows better than to escape. We should rather say he knows better than to stay to be caught or punished.

The foregoing may sound like a midsummer jest to old lawyers, but we are deadly serious. We have good backing, too. Dr. Wharton says, 2 Crim. Law, § 1678, note: "Whether, in a humane jurisprudence, the unresisted escape of prisoners from custody is a punishable offence, may well be doubted. The later Roman common law holds that it is not. The law of freedom, so argue eminent jurists, is natural; the instinct for freedom is irrepressible; if the law determines to restrain this freedom, it must

do so by adequate means; and it cannot be considered an offence to break through restraint when no restraint is imposed. Undoubtedly it is a high phase of Socratic heroism for a man condemned to death or imprisonment, to walk back, when let loose, to be executed or imprisoned. But the law does not undertake to establish Socratic heroism by indictment. It would not be good for society that the natural instinct for self-preservation should be made to give way to so romantic a sentiment as is here invoked; and it is a logical contradiction to say that the scaffold and the cell are to be used to prove that the scaffold and the cell are of no use. If men voluntarily submit to punishment, then compulsory punishment is a wrong. Besides this, a jailer may argue that if we hold that a prisoner is under bond as much when he is let loose as when he is locked up, there is no reason for over-carefulness in locking up. Following these views, the conclusion has been reached that an unresisted escape is not *per se* an indictable offence, and this view has been adopted by all modern German codes. The English decisions on this point may be too firmly settled to be now shaken; but considerations such as those which have been mentioned may not be without their use in adjusting the punishment on convictions for unresisted escapes."

It seems to us more reasonable to reward a prisoner for staying quietly and obediently in jail, as some States now do, than to punish him for running away. If it is cruel to punish a man for breaking jail, what shall we say of punishing his wife for aiding him?

The law is guilty of cruelty quite worthy of the inquisition in this regard. For example, an imprisoned convict went by permission of his keeper about the land connected with the jail, went to market and brought back provisions for the inmates of the jail, cooked food for them in the kitchen of the dwelling-house attached to it, went to the adjacent barn and there fed and milked the cow, and from the barn departed and left the State. *Held*, a criminal escape. *Riley v. State*, 16 Conn. 47. What a cat-and-mouse-play doctrine is this! Even if the jail is so unhealthy and filthy as to endan