(*Note by Editor.*)

This case may be regarded as important upon both points raised and decided, although in regard to the first question there is little ground of doubt.

1. The very necessity of the case, in self-defence, presupposes that the party must be permitted to act upon appearances; but if he acts rashly or negligently, he is responsible for consequences, as well to the party whom he mistook for an assailant, as to all others accidentally damaged by reason of the rash or negligent attack on his own part. This is declared in *Levett's Case*, cited in *Cook's Case*, Cro. Car. 537, 538, where the master of the house, supposing his house attacked in the night time by burglars, rushed down stairs with his drawn rapier, and seeing the glimpse of a servant girl of one of the neighbors, whom one of his own servants had secreted in the buttery, and mistaking her for a burglar, thrust her through the body, by which she died immediately, and was held guilty of no crime. And the same was maintained in an early case, where the gamekeeper shot the owner of the preserve, mistaking him for a deer-stealer, and it was held excusable homicide. The same doctrine has always been maintained in the English courts, and is the established rule in America: *State* v. *Scott*, 4 Iredell (N. C.) 409; *Stewart* v. *The State of Ohio*, 1 McCook, 66; *Oliver* v. *State of Alabama*, 17 Alabama, 587. This rule of the common law is too well established to admit of question. In cases where life is concerned, there is no doubt it should be held under severe restraint, and especially where firearms are resorted to. But we do not perceive any safer rule than that of the common law, that the party be allowed to act, and to carry the action to the extreme limit of taking life, where he, upon just grounds, earnestly believes his own life to be in peril, and there is no way of escape open to him. And the rule will equally apply where he is under the same apprehensions of grievous bodily harm, for the law does not require men to incur such peril of life or limb, looking to the law for redress. In all such emergencies the primary laws of nature revive, as against the outlaw; and one who puts himself in the place, or presents himself in the guise of an outlaw, or a murderer, or burglar, must be content to be treated according to his apparent character. This is not a point, at the present day, open to much discussion.

2. The other case decided in the question might seem, at first view, more doubtful; but we believe it will be found, upon careful analysis, equally free from doubt. The question here is not, as in *Leame* v. *Bray*, 3 East. 593, and that numerous class of cases, whether the action shall be trespass or case, but whether any action will lie for an accidental injury or damage resulting from a *lawful act*; for so long as the act itself is not lawful, there is no question the agent is legally responsible in some form for all the direct and natural consequences of his act. That was decided in the leading case of *Scott* v. *Shepherd*, 2 Black. 892; 1 Smith's Lead. Cas. 210. But the question in the principal case before us is, whether, if the act done in self-defence is done upon a justifiable excuse, and in a prudent and careful manner, the agent is responsible for any unforeseen and accidental consequence of the act, whether direct or indirect. It would seem there could be but slight doubt in regard to a proposition of this kind.

It is not whether the use of firearms is allowable in self-defence; that has been settled by common consent ever since their invention. It is much the same question as their use in war. Self-defence is war, private war; allowing the party to resume, as against an outlaw, or one who comes in the guise of an outlaw, the primitive rights of a state of nature, the ante-social state, and to repel force by force.

Neither is it the inquiry, whether firearms may be used in self-defence in the midst of a melee or street fight; for the law does not require a man to use one mode of self-defence on one occasion, and not upon others. He has a right to use all the means which "God and nature have put into his hands." It is the primitive war of natural forces, and he is not obliged to mete them out with a scrupulous regard to possible consequences to others. Others must be content to take their chance, as they do in regard to other legal acts, or as they do in regard to all accidental consequences where no one is in fault. If the law of self-defence requires qualification, in consequence of the more destructive character of the instruments of modern warfare, it should be done by the legislature, rather than by the courts.

This doctrine is very ably defended by Shaw, C. J., in *Brown* v. *Kendall*, 6 Cush. 292, and by Williams, C. J., in *Vincent* v. *Steinhour*, 7 Vt. 62. It is well said by Lawrence, J., in *Leame* v. *Bray*, *supra*, and, as applied to the present question, by Shaw, C. J., in *Brown* v. *Kendall*, *supra*, that if the agent is to be made responsible, he must be so to the full extent; and if death ensue, it will be manslaughter at the least. The result of this will be, that if, in self-defence, where one may kill his assailant, he should accidentally kill another, he would be liable to punishment for manslaughter. It is very obvious no such consequence could flow from a lawful act.

The late case of *Hummach* v. *White*, 9 Jur. N. S. 796, has some bearing upon the question before us. It was there held, that where one took a horse, purchased the day before, into a crowded street to train him, and the horse becoming restive rushed upon the sidewalk or pavement and killed a man rightfully there, there could be no action, civil or criminal, maintained against such rider or owner of the animal, without distinct affirmative proof of negligence on his part. The mere happening of the injury or damage is not evidence to be submitted to the jury; there must be some distinct affirmative evidence of negligence, to entitle the plaintiff to go to the jury.

I. F. R.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

Necessity of an Admiralty Court.

Gentlemen,—Having seen an excellent article in your September number under the head of "An Admiralty Court," and wishing to see the subject fully discussed by abler pens than mine, I have, hoping to draw them out, ven-