

BIBLICAL RECORDER.

THE ORGAN OF THE NORTH CAROLINA BAPTISTS—DEVOTED TO BIBLE RELIGION, EDUCATION, LITERATURE AND GENERAL INTELLIGENCE.

Volume 58.

RALEIGH, N. C., WEDNESDAY, JANUARY 11, 1893.

Number 28.

The Biblical Recorder.

PUBLISHED EVERY WEDNESDAY.

OFFICE:

115 (up stairs) Fayetteville Street, Raleigh, N. C.

TERMS OF SUBSCRIPTION:

One copy, one year..... \$ 3.00
One copy, six months..... 1.00
Clubs of ten (copy extra to sender)..... 30.00

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Talks About Law—No. 9.

BY JUDGE R. W. WINSTON.

THE LAW OF SELF-DEFENCE.

In our State, whenever a person admits that he has killed another with a deadly weapon, the law supplies malice; and, if nothing else appear, he is guilty of murder. Facts in mitigation or justification of his conduct must appear in evidence, otherwise he pays the capital penalty. As is well known, in all criminal cases, the State must satisfy the jury, beyond all reasonable doubt, of the guilt of the accused. But this rule has no application when one admits that he has slain another. For when he makes this admission there is an end to all reasonable doubt, and the defendant has the burden cast upon himself to show facts and circumstances of excuse.

Every killing is a homicide. But, of course, there are several grades of homicide. When no particle of blame attaches to one in killing another, the law says that he is justified in the act. The familiar illustration of this is when the sheriff does execution upon one by hanging him.

Then we have the general classification called excusable homicide. This may arise in several ways. If a person be doing a lawful act and accidentally kill another, this is excusable homicide through misadventure. Or if one is set upon by another, and being "pressed to the wall," slay his assailant to save his own life or his person from great bodily harm, this is called excusable homicide in self-defence. It is of this that we propose, in part, to write in this article. Before doing so, however, we will explain that there is another and deeper grade of homicide called felonious homicide. If the felonious killing be with malice, and this malice may be express or implied, we have the crime at which human nature shudders, called murder. But if the felonious slaying be without malice, we have manslaughter.

Let us consider, therefore, what are the excuses that the law adjudges sufficient to reduce the grade of the killing from murder to excusable homicide or to manslaughter.

In the first place, let it be borne in mind that words, however grievous, will not justify a blow, or excuse, or indeed even mitigate a killing. That is to say, if one use the most opprobrious epithet to your very face and, in consequence of the same, you strike him, you are guilty of a battery; or, if you kill him, you are guilty of murder. True, in the former case the party who used the words would be indictable for an affray, but you would not be excusable. Generally speaking, the party who provokes the difficulty is the more guilty of the two, and is so treated by the courts. What will excuse a blow? and what will excuse a killing? Now quite a variety of facts and circumstances will mitigate a killing from murder to manslaughter, but what will absolutely excuse the fact?

If one strike and slay another to save his own life or his person from great bodily harm, which the assailant is about to and would inflict but for the disabling blow, the slaying is excusable. So if one kill another to prevent a felony threatened and begun, and which if committed would be punishable with death, he is excusable.

For example, if a man were breaking into your dwelling in the night time and you were to shoot and kill him to prevent the crime, you would be excused. So if one make a criminal assault on a female and is killed to prevent it, it would be excusable homicide. But after the assault was consummated if the assailant were killed, not to prevent his escape, but in the heat of passion, this would be murder.

Even if one kill the violator of the sanctity of home in flagrant delicto it is not excusable homicide, but manslaughter. The famous Daniel Sickles trial for the slaying of Philip Barton Key in Washington City many years ago illustrated this point; and in the trial, the opinions of our North Carolina Judges were often quoted.

If one, arrested by an officer for a felony, is making his escape and it become neces-

sary to shoot in order to hold the prisoner, this is excusable homicide, perhaps. Certain it is, if the offender is resisting arrest. So it is apprehended that if a private citizen arrest one who has committed a capital felony, and the offender endeavors to escape, and it becomes necessary to shoot and kill in order to hold the prisoner, this would be excusable. Many years ago a man shot and killed another who was walking in his front yard in the night time. The party was not committing any offence. Our courts held that to kill a man to prevent a bare civil trespass was murder.

Our statute provides that every person present at any breach of the peace shall endeavor to suppress the same, and if necessary may arrest the offenders.

A case occurred in the county of Wayne in 1870 which is interesting. Barney Bryant had a hog stolen. He suspected a fellow named Cogdell. Armed himself and went to Cogdell's house. Cogdell, being accused by Bryant of the theft, ran away. Bryant ordered him four times to stop, and then shot and hit him. For this Bryant was tried and convicted. "Had he killed when he shot it would have been manslaughter at the least," says the court. It will be observed that this stealing did not occur in the presence of Bryant; nor did he say that he came to arrest Cogdell; nor was it shown that the shooting was necessary to prevent his escape; nor did he have a warrant.

In this case the court clearly intimate that one is not to be excused who slays another not arrested, but fleeing from arrest for a minor felony, such as theft and the like.

But it would seem that if the offence committed be capital, and a person present makes known his intention to arrest, and the felon see he may be killed if it be necessary to kill to prevent his escape.

Therefore, in these latter days of burglary, we may take courage, for if the burglar is fleeing from our house in the dark and we command him to halt and be under arrest, and he fail to do so, but continues his flight, and we shoot and kill him, and the shot be necessary to prevent his escape, this would be excusable on our part.

** We have seen that words will not excuse a blow or mitigate a killing. But a blow will often reduce the grade of homicide from murder to manslaughter.

For example, if two men meet and fight willingly, and in the heat of passion one slay the other, this is but manslaughter. The law has regard for the weakness of mankind.

Sometimes one man will have a grudge against another, malice the law calls it, and he will provoke that other to strike, and after the first blow is stricken, the party assaulted will draw his weapon and take human life. If the jury find such facts as these it would make a case of murder. We do not have malice if the crime be manslaughter. "Malice prepense" and the "furor brevis" do not go together. "Malice excludes passion; passion presupposes the absence of malice." This doctrine was laid down in Madison Johnson's case, in the first volume of Iredell's Law. And while it has not been changed to this day, still our court, in a case in the 80 N. C. R. against one Barnwell, say that if there be malice, and a reconciliation take place, and then a killing, on a first provocation, the law will refer the motive to the latest provocation, and not to the old grudge.

Generally speaking, therefore, we may say that a killing upon provocation is not murder but manslaughter.

But in a case against one Curry, in the first of Jones, we find three exceptions to this rule as follows:

1. When there is provocation, no matter how strong, if the killing is done in an unusual manner, evincing thereby deliberate wickedness of heart, it is murder.

2. Where there is but slight provocation, if the killing is done with an excess of violence out of all proportion to the provocation, it is murder.

3. Where the right to chastise is abused, if the measure of chastisement, or the weapons used, be likely to kill, it is murder.

A drunken fellow caught hold of the bridle rein of a man's horse and wouldn't let the rider proceed on his journey. His journey was delayed about ten minutes. The men were somewhat related, and had just been drinking together. Finally the man on the horse dismounted, knocked the offender down with a jug, filled with molasses, and, after felling him to the ground, crushed in his skull with the stone jug, adding, "D-n you, lie there." This was held only manslaughter; and was not embraced in the second exception above because the provocation was not very slight, and there was no malice, and the weapon was not prepared to kill. This case is reported in the fifth of Jones.

We often hear of one "retreating to the wall."

What does it mean? Certainly not that he shall actually go back until he come to an obstruction which prevents further retreat. It means simply that the party assaulted must flee as far as he conveniently can either by reason of some wall, ditch or other impediment, or as far as the fierceness of the assault will permit him.

If one is defending his habitation, and is without fault himself, he is not compelled to retreat.

So if a person unlawfully and feloniously assault one, retreat is not necessary. Nor does an officer, lawfully arresting one, have to retreat to the wall.

But if the assault is without any felonious

intent, the person assaulted may not stand his ground and kill his adversary, if there be any way of escape open to him. So, even if one enter into a fight willingly and in the progress of the fight he be put to the wall, and it become necessary in order to save his own life or his person from great harm that he kill his adversary, this is excusable homicide.

It would not be proper to conclude this paper without stating that if a person is assaulted in such a way as to induce in him a reasonable belief that he is in actual danger of losing his life, he will be justified in defending himself, even if the danger prove to be apparent only and not real. For example, if one draw and present a gun or pistol at another, and that other reasonably fearing his life to be in danger, shoot and kill first, this will be excusable; although the dead man's weapon should be found afterwards to be not loaded.

A SUGGESTION.

In North Carolina, at the present time, we have three verdicts in cases of homicide: (1) guilty, (generally); (2) guilty of manslaughter; (3) not guilty.

Our Judges now, often, are compelled to charge the jury that the prisoner is guilty of murder or of nothing. The law has no grade between the two. In other words, cases arise in which there is no element of manslaughter. It is, hence, guilty or not guilty.

Juries are human, and are loth to take human life; hence the guilty sometimes escape entirely; whereas, if there were an intermediate grade of crime of less gravity than murder, it would rarely occur that there would be a miscarriage of justice.

New York State and Texas and Tennessee, and many others, have changed the law of homicide very materially and with satisfactory results.

There they have murder in the first degree and murder in the second degree.

All murders which are perpetrated by means of poisoning or lying in wait, or which are committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem or burglary, and all other kinds of wilful, deliberate and premeditated killings, are murder of the first degree.

Murder in the second degree includes all other kinds of killing not embraced in the definition of murder in the first degree. So that when the unlawful killing of a human being is the result of malice, suddenly produced at the time the fatal blow is struck, and the killing is without premeditation or deliberation, it is murder in the second degree.

Our law givers now, about convening, will find it interesting to see if the change is desirable and necessary.

The Hymn-Books I Like Best.

I can't sing a hymn. I have never written one. I do not claim to be a judge of the good points of one. Nor do I claim excellence in hymn-reading—an accomplishment never attained by many preachers.

Yet, I love to read hymns that express the varied experiences of the Lord's people, and their outgoings after God, holiness and heaven.

I have a few old hymn books, one commendable feature of which is the absence of the jig music that mars so many of our modern books.

The first book I'll speak of is the "Olney Hymns," by Rev. John Newton, Rector of St. Mary, Woolnoth, London. The preface bears date Feb. 15, 1779. My copy is an American reprint of a somewhat later date. Although only the name of Newton appears on the title page, the book is the product of the joint labors of John Newton and William Cowper. The former says, in the preface, that the work "was intended as a monument to perpetuate the remembrance of an intimate and endeared friendship. With this pleasing view, I entered upon my part, which would have been smaller than it is, and the book would have appeared much sooner and in a very different form, if the wise, though mysterious, providence of God had not seen fit to cross my wishes. We had not proceeded far upon our proposed plan before my dear friend (Cowper) was prevented by a long and afflictive indisposition from affording me any farther assistance."

All the hymns in the book were composed by Newton and Cowper,—the former having written nearly three hundred, while the latter wrote about sixty of them in consequence of his "indisposition."

Perhaps some account of the authors would enhance the reader's interest in their hymn-book.

William Cowper was born at Berkhamstead, in Hertfordshire, England, in the year 1731. At a very early age, he evinced that morbid tendency to diffidence, melancholy and despair which, in later years, led to mental derangement and withdrawal from the stern duties of public life. Educated at Westminster, he entered the legal profession, from which he retired at the age of thirty-three. "I rambled," said he, "from the thorny road of my austere patroness, jurisprudence, into the primrose paths of literature and poetry."

Lindsay Murray says that Cowper was appointed Clerk of the Journals of the House of Lords; and, a parliamentary dispute making it necessary for him to appear at the bar of the House, his terrors on this occasion rose to so astonishing a height that they overwhelmed his reason, and he was obliged to relinquish a station so formidable to his

singular sensibility. Soon afterwards his mind became clear and tranquil, and he settled in the town of Huntingdon in the year 1765.

During his lucid intervals he wrote with a masterful hand, the works that have justly placed his name among the literary celebrities of Great Britain.

I have seen somewhere the statement that at one time, while laboring under great depression and the feeling that he had been shut out from the mercy of God, he procured a bottle of poison with suicidal intent, and having reached his room, he discovered that the bottle had been broken and the poison spilled. The discovery of the accident he interpreted as a token of the Divine favor, and in grateful acknowledgment of the same, he sat down and wrote the hymn beginning:

"God moves in a mysterious way,
His wonders to perform," &c.

Many of his hymns are found in all the popular hymn-books of the present day. I am sorry that many of them are not printed as he wrote them. For instance, in that beautiful hymn whose first stanza begins—

"There is a fountain filled with blood," &c.,

Cowper wrote—

"The dying thief rejoiced to see
That fountain in his day;
And there, *here*, I, as vile as he,
Washed all my sins away!"

expressing an accomplished fact, a blessed personal experience already attained.

The hymn, as now printed in most of the books, expresses a hope that may be fulfilled or an experience that may be attained. Besides, I fail to find the sixth and seventh stanzas in any book that I can lay my hand upon.

In addition to the many hymns he wrote, he composed many pathetic and descriptive poems, evincing the exquisite delicacy of his feelings and the goodness of his heart. His "Task," which placed him in the front rank of English poets, was published in 1785, and his "Translation of the Iliad and Odyssey of Homer in Blank Verse" appeared in 1791. The inquietude and darkness of the poet's latter years were terminated by a gentle and tranquil dissolution in the year 1800, at the age of about sixty nine years.

I cannot forbear transcribing a few lines from that excellent poem "Cowper's Grave," by Elizabeth Barrett Browning—

"It is a place where poets crouning may feel the
heart's decay,
It is a place where happy saints may weep amid
their praying;
Yet let the grief and humbleness as low as silence
languish!
Earth surely now may give her calm to whom
she gave her anguish.

"O poets! from a maniac's tongue was poured the
deathless singing!
O Christians! at your cross of hope a hopeless
hand was clinging!
O men! this man in brotherhood your weary
paths beguiling,
Groomed inly while he taught you peace, and
died while ye were smiling!"

John Newton was born in England July 24, 1725. His pious mother early taught him the Scriptures and commended him to God in her prayers. Says he, in his autobiography, "though in process of time I sinned away all the advantages of these early impressions, yet they were for a great while a restraint upon me; they returned again and again, and it was very long before I could wholly shake them off; and when the Lord at length opened my eyes, I found a great benefit from the recollection of them. Farther, my dear mother, besides the pains she took with me, often commended me with many prayers and tears to God; and I doubt not but I reap the fruits of these prayers to this hour."

His mother died July 11th, 1732, or before he had completed his seventh year. His father, a sea going man, afterwards married again, and young Newton went to sea, and for many years was engaged in the African slave trade.

He became sceptical, wicked and disgustingly profane, shocking even his wicked fellow-seamen by his horrid blasphemy. He tells us himself: "I know not that I have ever since met so daring a blasphemer: not content with common oaths and imprecations, I daily invented new ones; so that I was often seriously reproved by the captain who was himself a very passionate man and not at all circumspect in his expressions. * * * When we met with many distasters, he often would tell me that, to his great grief, he had a Jonah on board; that a curse attended me wherever I went; and that all the troubles he met with in the voyage were owing to his having taken me into the vessel."

His many perils and hair-breadth escapes from death, on land and sea, seem to have made but little impression upon him. "The Lord had now," he continues, "to appearance given me up to judicial hardness; I was capable of anything. I had not the least fear of God before my eyes, nor (so far as I remember) the least sensibility of conscience."

Two instances of great suffering and humiliation I cannot forbear to mention:

While on the western coast of Africa, the captain of the vessel having died, and Newton not being on good terms with the mate, and fearing that he would be transferred to a man-of-war, he determined to remain in Africa. On an island near the western coast, he was taken sick and committed to the care of a negro woman, who soon manifested great dislike towards him. But I will let him tell the story himself: "I had some-

times not a little difficulty to procure a draught of cold water when burning with fever. My bed was a mat spread upon a board of chest, and a log of wood my pillow. When my fever left me and my appetite returned, I would gladly have eaten, but there was no one gave unto me. She lived in plenty herself, but hardly allowed me sufficient to sustain life, except now and then, when in the highest good humor, she would send me victuals in her own plate after she had dined; and this (so greatly was my pride humbled) I received with thanks and eagerness, as the most eager beggar does an alms. * * * When I was very slowly recovering, this woman would sometimes pay me a visit, not to pity or relieve, but to insult me. She would call me worthless and indolent, and compel me to walk, which when I could hardly do, she would set her attendants to mimic my motion, to clap their hands, laugh, throw limes at me. * * * Nor did I suffer less from the inclemency of the weather and the want of clothes.

The rainy season was now advancing; my whole suit was a shirt, a pair of trousers, a cotton handkerchief instead of a cap, and a cotton cloth about two yards long to supply the want of upper garments; and, thus accoutred, I have been exposed for twenty, thirty, perhaps near forty hours together, in incessant rains accompanied with strong gales of wind, without the least shelter, when my master was on shore. I feel to this day some faint returns of the violent pains I then contracted. The excessive cold and wet I endured in that voyage, and so soon after I had recovered from a long sickness, quite broke my constitution and my spirits. The latter were soon restored; but the effects of the former still remain with me as a painful memento of the service and wages of sin."

The second instance. Newton had, while his ship was lying at Plymouth, deserted his post, was caught and carried back to Plymouth. "I walked," says he, "through the streets guarded like a felon. My heart was full of indignation, fear and shame. I was confined two days in the guard-house, then sent on board my ship, kept awhile in irons, then publicly stripped and whipped; after which I was degraded from my office, and all my former companions were forbidden to show me the least favor or even to speak to me." Many other instances of suffering and narrow escape might be related; but these must suffice.

John Newton's conversion was a miracle of grace! Let no poor prodigal, who may chance to read this, despair of God's mercy or his own salvation.

It was Newton who said, "When I get to heaven, I shall see three wonders there: the first wonder will be to see many people there whom I did not expect to see; the second wonder will be, to miss many people whom I did expect to see; and the third and greatest wonder of all will be, to find myself there."

A short time before he died, his sight having failed him, he would offer comments on Scripture passages read at family worship and lead in prayer. On one of these occasions the lesson was that portion of Scripture in which Paul says, "By the grace of God, I am what I am." Newton's affecting comment followed: "I am not what I ought to be. Ah! how imperfect and deficient! I am not what I wish to be. I abhor that which is evil, and I would cleave to that which is good. I am not what I hope to be. Soon, soon, I shall put off mortality, and with mortality, all sin and imperfection! Yet, though I am not what I ought to be, nor what I wish to be, nor what I hope to be, I can truly say I am not what I once was, a slave to sin and Satan; and I can heartily join with the Apostle and acknowledge, 'By the grace of God, I am what I am!' Let us pray!"

I believe it is not generally known that Newton once visited the United States. It was during his last voyage before his marriage, which latter event took place Feb. 1st, 1750. He sailed from Antigua, one of the West India islands, to Charleston, S. C. "In this place," he continues, "there are many serious people; but I knew not where to find them out; indeed I was not aware of a difference, but supposed that all who attended public worship were good christians. I was as much in the dark about preaching, not doubting but whatever came from the pulpit must be very good. I had two or three opportunities of hearing a dissenting minister named Smith, who, by what I have known since, I believe to have been an excellent and powerful preacher of the gospel; and there was something in his manner that struck me, but I did not rightly understand him. The best words that men can speak are ineffectual till explained and applied by the Spirit of God who alone can open the heart."

A few years after his marriage he abandoned his seafaring life and entered upon a career of great usefulness as author and minister of the gospel.

Through his instrumentality, Claudius Buchanan was converted, entered the ministry and went to the East India. Buchanan's "Star in the East" led Adoniram Judson to enter the foreign field. Newton was instrumental in the conversion of Thomas Scott from the dark mazes of Socinianism to the belief, practice and proclamation of evangelical truth. Scott also wrote an excellent commentary on the Bible. It is also said that Newton, with Doddridge, was instrumental in the conversion of Witherings.

[CONTINUED TO THE FOURTH PAGE.]