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his demand. To make the entire contract the unit of forfeiture might yield to facility of interpretation and administration. Yet this seems to be no reason why the unit should not be the claim, if the latter sufficiently meets the requirements of protecting the Government against fraud.

CRIMINAL LAW — SELF-DEFENSE — NECESSITY OF RETREATING FROM THE HOME

Defendant and deceased had known each other for two years during which time they had, at intervals, lived together in defendant's home. On the night deceased was killed he and the defendant had been drinking together at a club and upon returning to defendant's home engaged in a quarrel. Deceased threatened defendant with a knife whereupon she stabbed and killed him. Defendant testified that she had no opportunity to get away from him although there were three exits from the kitchen. On appeal from a judgment of conviction for first degree manslaughter, *held*, that since defendant did not retreat from her home to avoid killing deceased she may not invoke the doctrine of self-defense. *State v. Grierson*, 69 A.2d 851 (N.H. 1949).

"Retreat to the wall" composes part of the law of self-defense,¹ and compliance with the doctrine is a condition precedent to reliance upon self-defense as a justification for homicide.² The doctrine is to the effect that one who, through no fault of his own, is suddenly attacked and placed in a position of peril, must retreat from his assailant, if to do so will not place him in a more perilous position, and might relieve him of the necessity of killing his assailant.³ This duty to retreat usually applies even when the one assailed is in a place where he has a lawful right to be.⁴ Justification for this theory is found in the concept that it is desirable to save human life even at the expense of imposing upon one guilty of no wrong, the humiliation of having to retreat from an assailant.⁵

Because the tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed, even to save human life,⁶ the doctrine of "retreat" has

1. *See* *Smith v. State*, 29 Ala. App. 212, 195 So. 290 (1940); *State v. Emery*, 236 Iowa 60, 17 N.W.2d 854 (1945); *State v. Sedwig*, 235 Iowa 609, 16 N.W.2d 247 (1944); *State v. Cox*, 138 Me. 151, 23 A.2d 634 (1941).

2. *Key v. State*, 27 Ala. App. 189, 168 So. 602 (1936); *State v. Hewitt*, 205 S.C. 207, 31 S.E.2d 257 (1944).

3. *See* *Miller v. State*, 31 Ala. App. 329, 329, 16 So.2d 803, 804 (1944); *King v. State*, 233 Ala. 198, 200, 171 So. 254, 256 (1936); *State v. Stevenson*, 8 Harr. 105, 109, 188 Atl. 750, 751 (Del. 1936); *State v. Sedwig*, *supra* at 610, 16 N.W.2d at 250; *State v. Cox*, *supra* at 610, 16 N.W.2d at 250; *State v. Cox*, *supra* at 152, 23 A.2d at 636.

4. *State v. Cox*, *supra*. *Contra*: *State v. Hiatt*, 187 Wash. 226, 60 P.2d 71 (1936).

5. *See* *Springfield v. State*, 96 Ala. 81, 82, 11 So. 250, 252 (1892).

6. *See* *Runyan v. State*, 57 Ind. 80, 84 (1877).

been rejected in some jurisdictions⁷ and modified in another.⁸ Even where the doctrine is recognized, retreat is not always a condition which must precede the plea of self-defense.⁹ Thus, it is almost universally held that one is not compelled to retreat when attacked in his home.¹⁰ From the common law concept that one's home is his "castle"¹¹ it follows that one in his home is already "at the wall."¹² This exception to the doctrine of "retreat" has been extended to cases where the one assailed was not in his house, but somewhere else on his premises,¹³ or in his place of business.¹⁴ It has been successfully invoked in cases where the altercation was between joint occupants,¹⁵ as in the case of a sharecropper and the owner of the farm,¹⁶ a guest and his host,¹⁷ partners,¹⁸ husband and wife,¹⁹ and father and son.²⁰

In the instant case the court, in holding that defendant should have retreated from her home to justify the slaying on the ground of self-defense, applied a more rigid rule than was applied even at common law. Questions which arise under this rule are: "Where shall the defendant flee, how far, and when may she return?"²¹

The better rule seems to be that the failure to retreat should be a circumstance to be considered with all the others in determining whether the defendant went further than he was justified in doing, rather than a categorical proof of guilt.²²

7. *People v. Holt*, 25 Cal. App.2d 366, 132 P.2d 545 (1942); *People v. Turner*, 385 Ill. 344, 52 N.E.2d 712 (1944); *Prater v. State*, 142 Tex. Cri. Rep. 626, 155 S.W.2d 934 (1941).

8. *State v. Bryant*, 213 N.C. 752, 197 S.E. 530 (1938) (distinguishing between felonious and nonfelonious assault); *accord*, *State v. Thornton*, 211 N.C. 413, 190 S.E. 758 (1937); *State v. Godwin*, 211 N.C. 419, 190 S.E. 761 (1937).

9. *Runyan v. State*, *supra*; *cf.* *Scott v. Comm.* 301 Ky. 127, 190 S.W.2d 345 (1937).

10. *Miller v. State*, 31 Ala. App. 329, 16 So.2d 803 (1944); *Vinson v. State*, 29 Ala. App. 234, 194 So. 705 (1940); *State v. Robinson*, 3 Ter. 419, 36 A.2d 27 (Del. 1944); *State v. Miller*, 223 N.C. 184, 25 S.E.2d 623 (1943); *State v. Hewitt*, *supra*.

11. *State v. Bissonnette*, 83 Conn. 261, 263, 76 Atl. 288, 289 (1910).

12. *See State v. Miller*, 223 N.C. 356, 358, 20 S.E.2d 274, 276 (1943).

13. *Ibid*; *State v. Hewitt*, *supra*; *State v. Zeigler*, 40 W.Va. 593, 21 S.E. 763 (1895).

14. *Nix v. State*, 249 Ala. 22, 22 So.2d 449 (1945); *State v. Pennell*, 224 N.C. 622, 31 S.E.2d 857 (1945).

15. *State v. Phillips*, 8 Harr. 24, 187 Atl. 721 (Del. 1936).

16. *State v. Osborne*, 200 S.C. 504, 21 S.E.2d 178 (1945).

17. *State v. Bissonnette*, *supra*; 83 Conn. 261, 76 Atl. 288 (1910).

18. *Jones v. State*, 76 Ala. 8 (1885).

19. *Hutcheson v. State*, 170 Ala. 29, 54 So. 119 (1910).

20. *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496 (1914).

21. *See State v. Phillips*, *supra* at 21, 187 Atl. at 721.

22. *See Brown v. United States*, 256 U.S. 335, 343 (1921).