tiffs complaint was that Hustwick bought in the premises. If there was a contract on the part of the defendant that the sale should be peremptory, it was truly enough said that the contract was broken by allowing the property to be bought in.

The plaintiff's counsel, in the argument before us, mainly relied on the authority of the case of *Warlow* v. *Harrison*, where in the Exchequer Chamber three learned judges gave their opinion that where an auctioneer advertised a sale without reserve, not disclosing in any way who his principal was, he personally contracted that there should be a sale without reserve. Two other learned judges did not agree in this view, and it appears that ultimately the Court of Exchequer Chamber pronounced no other judgment than that the pleadings should be amended to enable the parties to raise the question, unless they consented to a *stet processus*, which they did. We do not think therefore that we are precluded by this as a judgment of a court of error, and, if necessary, we should be at liberty to consider the question whether even in a case where the name of a principal is not disclosed by an auctioneer there is a contract by the latter such as is now insisted on. The Lord Chief Justice and my brother Shee are of opinion that there is not, inasmuch as the character of an auctioneer as agent is unlike that of many other agents as to whom so long as the fact of their having a principal is undisclosed it remains uncertain whether the contracting party is acting as principal or agent; while in the employment and duty of an auctioneer, the character of agent is necessarily implied, and the party bidding at the auction knowingly deals with him as such, and with the knowledge that his authority may at any moment be put an end to by the principal; I myself should pause before deciding upon this ground. I do not, however, wish to express dissent from the view thus expressed, and we are all of opinion that it is unnecessary to decide this point. The three judges who formed the majority of the Court in *Warlow* v. *Harrison*, base their opinion entirely on the fact that the vendor was not disclosed—that he was a concealed principal; but in the present case the passages in the hand-bill (which are not set out in the declaration) showed that the defendant was acting for a principal, the mortgagee, who was described, and whose agent, Mr. Hustwick, was named. Now, as a general rule, where an agent acts for a named principal, the contract, if any, is *primâ facie* with the principal, not with the agent, and accordingly acting on this principle the Court of King's Bench, in *Evans* v. *Evans*, 3 A. & E. 132, decided that where premises were let by auction by the plaintiffs as auctioneers, but at the foot of the written conditions was written "approved by David Jones," the contract of letting was not with the plaintiffs as auctioneers, but with David Jones. Patteson, J., saying "on the document I can see no doubt, if the plaintiffs let for themselves why is David Jones' name added?" We think this an express authority, that, if there was any contract in this case it was with Hustwick, not with the defendant. We are not to be understood as deciding that the plaintiff could not have maintained this action against Hustwick, but merely that he has failed in proving any case against the defendant. The rule therefore must be absolute to enter the verdict for the defendant.

Rule absolute.

UNITED STATES REPORTS.

SUPREME COURT OF ERROR OF CONNECTICUT.

William Morris v. Delos Platt and Another.

Assault authorizing belief of design to take away life—Self-defence—Fire-arms.

(Continued from page 307.)

But in that the court were mistaken. A man who is assailed, and under such circumstances as to authorize a reasonable belief that the assault is with design to take his life, or do him extreme bodily injury which may result in death, will be justified in the eye of the criminal law if he kill his assailant, and in an action of trespass if he unsuccessfully attempt to kill him, and he surviving brings his action, for the killing would have been lawful and of course the attempt lawful; and no man is liable in a civil suit or criminal prosecution for an injury lawfully inflicted in self-defence and upon an actual assailant. Doubtless the question whether the belief was reasonable or not, must, in either proceeding, be ultimately passed upon by a jury; and the assailed judges at the time, upon the force of the circumstances, when he forms and acts upon his belief, at the peril that a jury may think otherwise and hold him guilty. But, in the language of Judge Bronson, in the thoroughly considered case of *Shorter* v. *The People* (2 Comstock, 193), "he will not act at the peril of making that guilt, if appearances prove false, which would be innocence if they proved true." And such is the law as cited by Judge Swift (2 Swift Dig. 285), from *Selfridge's case*, and as held on a careful review of all the cases in *Shorter* v. *The People*, and in numerous other cases which may be found cited there, and in Bishop on Criminal Law (vol. 2, p. 561); and it is the law of the land. That part of the request of the defendant used the term "excusable," instead of "justifiable," in respect to the homicide, and the latter term would have been more accurate. But the import of the request is not materially varied by that, and we cannot intend that it influenced the decision of the court.

2. The plaintiff, in answer to the defence made, denied that he was an assailant, and claimed that he was a by-stander merely, and requested the court to charge the jury, in substance, that if they so found, he was entitled to recover, although they should also find the defendant to have been lawfully defending himself against his assailants, and the injury to the plaintiff accidental. That request of the plaintiff embodies the unqualified proposition that a man lawfully exercising the right of self-defence is liable to third persons for *any* and *all* unintentional, accidental injurious consequences which may happen to them, and the court so charged the jury. Although there are one or two old cases and some dicta which seem to sustain it, that proposition is not law.