

the other necessary to save his own life, he is guilty of felonious homicide if he kills him, unless he first actually puts into exercise this duty of withdrawing from the place."[†]

An assault may not be in the first instance felonious, but if in the heat of the affray there arises danger to the life of either of the parties, it can hardly be possible that there shall not exist in one or the other, or both of them, a felonious design to kill and murder. And the very law that requires the retreat to the wall recognizes the existence of such danger and of such design as a condition precedent to the retreat to the wall and its subsequent fatal result. Unless a man engaged in an affray is in danger of his life, or of great bodily harm, he has no right to kill his adversary, either before or after retreating to the wall. And therefore, as it is in all cases necessary, in order to excuse a homicide *after* a retreat to the wall, to show that the prisoner was, or believed he was, in serious danger from his adversary, it follows that that adversary must have been in the act of committing a crime, the equivalent of the statutory assault to kill, which is felonious.

The argument against the ruling of the Court is based upon the idea that when one is attempting to commit a felony, it is justifiable to prevent it by taking the felon's life, if that is the only mode in which the perpetration of the crime can be prevented. This, it may be observed, is merely arguing in a circle, for if the intended felony of the elder Donnelly could have been prevented by the flight of the younger, the death of the former at the hands of the latter could not be excused even upon this principle. We think that the Supreme Court of Iowa decided this case correctly, for we believe that the true rule is that to excuse a homicide on the ground of self-defence the party must, if he could with safety, have retreated to the wall, and that the only exception to the rule is that when a man is assailed in his own house he is under no obligation to retreat at all.†—*The Central Law Journal*.

[†] Bish. Cr. Law, § 870; citing Foster, 227; State v. Hill, 4 Dev. & Batt. 491; Stoffer v. State, 15 Ohio St. 47; State v. Howell, 97 Ind. 485.

[†]On this subject see: People v. Sullivan, 7 N. Y. 396; Mitchell v. State, 22 Ga. 211; Lyon v. State, 16 Cal. 390; Cotton v. State, 31 Miss. 504; People v. Hurley, 8 Cal. 390; State v. Thompson, 9 Iowa, 108; United States v. Mingo, 2 Curtis, 1.

NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Proudfoot, J.]

[April 20.]

COOK v. NOBLE.

*Will—Devise—Legacy—Maintenance to widow
and family—Abatement of legacies.*

A testator gave to his executors and trustees, of whom his wife was one, all his real and personal estate, with a direction to convert his personal estate into money, pay debts and invest balance. He directed them to pay his wife from time to time such money as might be sufficient to support, maintain and educate his family, and to maintain his wife in a manner suited to their condition in life, and for that purpose gave his wife power to collect money, and to take therefrom enough to maintain his family and herself. And he directed his sons to pay her \$150 a year after they received their lands, charging it on the lands, but they were not to pay it so long as she and the family were maintained out of the estate. The trustees were to pay \$1,000 to each of the daughters as they attained twenty-one, and if there was not sufficient personal estate to pay them the balance was to be a charge on the real estate; the real estate was to be divided between the sons when the eldest attained twenty-five; and then the trustees were to give him \$2,000. The balance of the personal estate was to be divided between the sons, the eldest being charged with his \$2,000.

Held, that the children were only entitled to maintenance until they attained their majorities.

Held, also, that the widow was entitled to maintenance until the provision as to the \$150 come into operation, which would be when the