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Criminal law--Self Defense--Defense of Another

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778, 69 S. E. 936 says, "The suppression or concealment of material facts known to the applicant is a fraud upon the company, and avoids the policy." *Tyler v. Savage*, 143 U. S. 79.

It is not the purpose of this article to advocate applying the harsh rule of marine insurance to life insurance, nor is its object that of denying to the insured any rights which he justly deserves. The desire is to point out that the insurer, even with his opportunity for examination and right of questioning, may fail to obtain the very information which would, if discovered, keep him from entering the contract. When such information is possessed by the applicant, and can be reasonably said to be regarded by him as a material fact, a failure to reveal this fact should not result in a reward to the insured.

—J. G. J. Jr.

CRIMINAL LAW—SELF DEFENSE—DEFENSE OF ANOTHER—D was convicted of an unlawful assault on P. He admits the assault, but pleads defense of his father. Evidence showed that D shot P in defense of his (D's) father, who was at the time engaged in an affray with P. Evidence also showed that D's father was at fault in bringing on the affray, and that D apparently knew this. *Held*, D was justified in shooting P in defense of his father, regardless of the question of whether the father had or had not been at fault in bringing on the affray between himself and P. *State v. Jas. Wisman*, 94 W. Va. 224, 118 S. E. 139 (1923).

Such a decision seems a substantial extension of the law of self defense and would seem to justify a son in doing more in defense of his father than the father could do in his own defense. It is well settled law that whatever one may do in his own defense, a relative may do in his behalf, *Stanley v. Commonwealth*, 86 Ky. 440, 6 S. W. 155, 13 R. C. L. 837, but the right of a person to take life in defense of another is recognized by the law only when such other would be entitled to kill in his own defense, *State v. Cook*, 78 S. C. 253, 59 S. E. 862, 13 R. C. L. 838, and the one interfering acts at his peril if it turns out that the person defended had forfeited his right of self defense. 13 R. C. L. 838. It is submitted that the father here had, by bringing on the affray with P, forfeited his right of self defense until he had retreated and withdrawn from the fight. What one may do in defense of himself when threatened with death, he may also do in defense of a brother,

but if the brother was at fault in provoking an affray, he must retreat as far as he safely can before his brother would be justified in taking the life of an assailant in his defense. *State v. Greer*, 22 W. Va. 802. See also *Clarke v. Commonwealth*, 90 Va. 360, 18 S. E. 440; *Jackson v. Commonwealth*, 98 Va. 845, 36 S. E. 487; *State v. Cain*, 20 W. Va. 680. The right of one person to defend another is co-extensive with the right of that other to defend himself, and the one who defends is upon no higher plane than the one defended. If the one defended is not free from fault in bringing on the difficulty, his defender cannot be. *Weaver v. State*, 1 Ala. App. 48, 55 So. 956; *Wheatley v. State*, 93 Ark. 409, 125 S. W. 414; *Wheat v. Commonwealth*, 118 S. W. 264 (Ky. 1909). Thus it seems that a son acting in the defense of his father occupies exactly the position that the father would occupy in his own defense, that the son can do no more than could be done by the father, and in case of an affray a retreat is necessary before taking an adversary's life in self defense. *State v. Hood*, 63 W. Va. 182, 59 S. E. 971; *State v. Hatfield*, 48 W. Va. 562, 37 S. E. 623. In repelling an assault upon a member of his family, one is entitled to the same defense as if he had been the person assaulted, but to no other or greater defenses. *Wood v. State*, 128 Ala. 27, 29 So. 557, 30 C. J. 34. So, if a father was at fault in bringing on a combat, before the son can be excused for an assault in defense of the father, it must appear that the father had abandoned or offered to abandon the combat. *State v. Brittain*, 89 N. C. 481; *State v. Johnson*, 75 N. C. 174; *Pierson v. State*, 23 Texas 579. It would seem then that the principal case stands practically alone in its holding, and that it is not supported by authority in this or in other jurisdictions of this country. The rule seems an unwarranted extension of the law of self-defense, and one capable of working injustice on society in general.

—J. H. W.