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ASSAULT AND BATTERY - DEFENSE OF PROPERTY

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RECENT DECISIONS

This section is divided into two parts: notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

ASSAULT AND BATTERY — DEFENSE OF PROPERTY — In a suit brought to recover damages for the death of plaintiff's husband the evidence indicated that the deceased, and other intruders, entered defendant's place of business after having been ordered to leave. The group "threw bricks and other missiles at Gennaro, destroying whiskey bottles and other property, whereupon Gennaro secured a pistol and shot and killed Wade." It was *held* that defendant was justified in killing the inebriated trespasser. *Wade v. Gennaro*, (La. App. 1942) 8 So. (2d) 561.

The case is of interest, in large part, because of its contradictory statements as to the principles of law which govern, and the implication that life may be taken in defense of property. True, the latter proposition is not stated in clear-cut fashion; the court suggests an added justification, in the present case, of self-defense. But there seems to be no doubt as to the fairness of the first suggested criticism. Referring to an earlier Louisiana case,[1] the court quotes "the law on the subject" as follows: "one who is himself in fault cannot recover damages for a wrong resulting from such fault, *although* the party inflicting the injury was *not justified* under the law." Then, referring to the principle which the plaintiff contended was applicable—that "a person defending himself from attack is liable" when he employs excessive force—the court states that it applied "the latter principle of law" in the very case from which it quoted the applicable principle first stated. Then, as if to make confusion doubly certain, the court adds that "no assault had been made" by the plaintiff in the earlier case. As both of the principles stated relate to the use of force by a person defending himself or his property from attack, the force of the earlier case, as authority for the principal case, vanishes. Though the applicable principles seem rather clear elsewhere,[2] it would appear that a Louisiana lawyer, attempting to make a prophecy as to the probable outcome of a case in this field, would be in somewhat of a quandary. In the instant case the court makes the suggestion that the owner of a place of business is "not obliged to witness the destruction of his property without attempting to prevent it." While there can be no quarrel with that particular statement, it is usually said that defense of property is no justifi-

[1] Randall v. Ridgley, (La. App. 1939) 185 So. 632.

[2] Speaking of the privilege of self-defense, for example, Prosser in the most recent, and excellent, treatise in this field says: "The privilege is limited to the use of force which is, or reasonably appears to be, necessary for protection against the threatened injury. The defendant is not privileged to inflict a beating which goes beyond the necessities of the situation. If he does, he is committing a tort as to the excessive force, and it is entirely possible that each party may have an action against the other." PROSSER, TORTS 126-127 (1941).

cation, in and of itself, for the taking of life.[3] Perhaps the saving feature in this particular case, where life was taken, lies in the apparent afterthought implicit in the phrase which follows the quoted statement: "to say nothing of the danger to himself." In most jurisdictions the "say nothing" portion of the opinion would be the "meat" of the justification for the type of defensive measures employed.

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[3] Referring to privileged force in defense of property, it is said in PROSSER, TORTS 133 (1941): "It is the accepted rule that there is no privilege to use any force calculated to cause death or serious bodily injury where only the property is threatened." See also TORTS RESTATEMENT, § 79 (1934).