This decision will help to clear up a very difficult point in the law of homicide, a point which was thrust forward in *The Queen v. McKay*.[6]

THE QUEEN v. BUFALO[7]

Criminal Law—Homicide—Murder or Manslaughter—Excessive Force in Self-Defence—Onus on Crown

B was presented on a charge of murder by stabbing, but at the trial Counsel applied for a ruling that there was no evidence to support a charge of murder as distinct from manslaughter. Smith J., in giving this ruling, stated that, to establish the accused as guilty of murder, it is necessary for the Crown to prove that he killed the deceased intentionally and not by accident and that in killing him he had an intention either to kill or to do grievous bodily harm. Here the accused raised a plea of justified self-defence. In such a case the onus is on the Crown to prove that the case is not one of reasonable self-defence. Smith J. then went on to give some of the limits to the doctrine:

1. The accused must act while protecting himself from injury.
2. He must not exceed the limits which the law regards as reasonable.

These limits depend on consideration of necessity and protection.[8] Smith J. stated that he was forced to accept the ruling of Lowe J. in *The Queen v. McKay*[8a] in which it was said that where an accused person has acted in self-defence but has exceeded the limits of reasonable self-defence, he cannot be guilty of murder but may be guilty of manslaughter.

This was the law stated by Smith J., but he continued that it was his opinion in this case that there was no evidence to show that the accused was not acting in self-defence. The accused had stabbed the deceased when the latter was attacking him with a bottle. The Crown attempted to show that the stabbing was done with a desire for revenge but no evidence, according to the trial judge, was proffered to uphold such a claim. The trial judge added that, on the contrary, there seemed to him to be ample reason why the accused should have feared that he would be killed or seriously hurt. For these reasons, he thought that there was no evidence at all to support any claim of excessive force used whilst the accused was defending himself.

Although this ruling by Smith J. is of little importance in establishing the law it helps us to understand more readily this difficult point relating to excessive force in self-defence, recently settled by the High Court in *The Queen v. Howe*.[9]

J. S. WINNEKE

[6] *Supra*, n. 2.
[7] [1958] Argus L.R. 746. Supreme Court of Victoria; Smith J. *Cf.* preceding case note.
[8] *The Queen v. McKay* [1957] V.R. 560; [1957] Argus L.R. 648.
[8a] *Supra*, n. 8.
[9] [1958] Argus L.R. 753.