

from a Cart, &c. (and giveth warning thereof) and another is killed thereby against his will, 21 H. 7. Coron. 59. *Bract.* 121.

So if a Labourer that is felling or cropping a Tree, and the same, or part thereof, falleth and killeth a Man.

So if the Head of his Hatchet or other Tool falleth from him, and happeneth to kill one standing by. *Deut.* 19. 5, 6. & 10. accordeth, 'sc. That he is not worthy of death, but innocent.

So if a Man be (in due and convenient time) doing any other lawful thing, that may breed danger to such as pass by, and shall give warning thereof, so that such as pass by, may hear and flee the peril, and yet another passing that way shall be killed therewith.

And so if Men shall run at Tilt, Just or fight at Barriers together by the Kings Commandment, and one of them doth kill another: In these former Cases and the like, it is Misadventure, and no Felony of Death.

And yet in such Cases of Misadventure, as also where one killeth another *Se Defendendo*, by the Common Law these offences were Felony of Death, and the Offender should have died for the same; but now by the Statute, such Offenders are to have Pardon for their Life and Lands, yet their Goods shall remain forfeit as before (at the Common Law.) See these Statutes, 6 Ed. 1. c. 9. & 2 Ed. 3. c. 2. 21 Ed. 3. fol. 17. *Br. Cor.* 40. & *Forf.* 9, 13, 15.

Also in these Cases of Misadventure, and in the former Cases of Homicide committed by Infants, and other Persons being *Non compos mentis*, as also where one killeth another in defence of his person; they shall be discharged in this manner, *sc.* If they desire to purchase their pardon, they must upon their Trial, plead *Not Guilty* (and shall give in Evidence the special matter) and then this special matter being found by Verdict, they shall be bailed, and then they must sue forth a *Cerciorari*, to have this Record certified to the Lord Chancellor of England, who thereupon shall make them a Charter or Pardon of Course under the Great Seal, without speaking or suing to the King for it. See *Stamf.* 15.

But if a Man be doing of an unlawful Act, though without any evil intent, and he happeneth by chance to kill a Man; this is Felony, *viz.* Manslaughter at the least, if not Murder, in regard the thing he was doing was unlawful. *Finch.* fol. 75.

As shooting of Arrows or casting of Stones into the High-way, or other place, whither Men do usually resort.

So of fighting at Barriers or running at Tilt or Justs, without the Kings commandment, whereby a Man is slain; and although it were by the Kings commandment, yet it was holden Felony by the Justices, *tempore* H. 8. "*Hob. p.* 134. *contra.*

Playing at Hand-Sword, Bucklers, Footbal, Wrestling and the like, whereby one of them receiveth an hurt, and dyeth thereof within a year and a day. In these Cases, some are of opinion, that this is Felony of Death; some others are of opinion, that this is no Felony of Death, but that they shall have their Pardon of Course, as for Misadventure, for that such their play was by consent: And again there was no former intent to do hurt, or any former Malice, but done only for Disport, and Tryal of Manhood.

A Man casting a Stone at a Bird or Beast, and another Man passing by is slain therewith, *quere*, whether this be Man-slaughter, or but Misadventure. The opinion of *Finch* Chief Justice in 11 H. 7. fol. 23. is, That if a Man cast a Stone over an House, and killeth a Man, this is no Felony, but Misadventure. But Mr. *Brook* abridging this Case, saith, It seemeth to be

6 Ed. 4. 7.
F. Cor. 398
Plo. 19.

11 H. 7. 23
Sec Br.
Cor. 229
contra.

Hob. 134

Co. 5. 61

Flitz. 246.
& 248. b.
Br. Cor. 1.
See Stat.
9 E. 1. 9.
4 H. 7. 22.
Reg. 309.

§ 2.
S. Defen-
dendo.

unlawful
Act.

Stamf. 164

Stamf. 124

11 H. 7.
Br. Cor.
229.

11 H. 7. 23
Cromp. 26
& 29. 2.
Cor. 118.
136.

P. R. 124

Flitz. Cor.
304 & 354
See Num.
35. 3.
Br. Cro.
125.
Cor. 128.
136.