

§. 4. Also in an Appeal of Felony, if the Appellant and Appellee do joyn ^{37 H. 6. 21.} to try it by battle, and therein one doth kill the other; as the Law doth allow such trial; so doth it allow the event to be justifiable, as depending upon the Judgment of God, who giveth Victory according to Truth.

So a Man as a Champion in trial upon a Writ of Right; if he killeth the other. This is Felony, *Pl. 9. b.*

“ If two Men Tilt or Turney in the presence of the King, or if two ^{Hob. 134.} Masters of Defence, playing their prizes, kill one another; it is not Felony.

‘ Necessity of three sorts, *sc.*

§. 5. Necessity.

‘ 1. Of conservation of life, &c.

‘ 2. Of obedience, as where the Wife stealeth with her Husband.

‘ 3. Of the Act of God, or a Stranger.

‘ Yet in these Cases, Necessity priviledgeth in cases of Homicide only when it is inevitable. *Braddon.*

And in Cases of Theft only *Quoad jura Privata, sed non valet contra Rempublicam. Ba. 32.*

Also when one Man killeth another in the necessary defence of himself, or his, thereby to deliver Himself, his Possessions or his Goods, or some other Persons, which he is bound to defend from peril, and which cannot otherwise escape. This is Homicide tolerated upon necessity.

§. 6. For defence of Person, House or Goods.

‘ And here the Sword is (as one saith) a Weapon of defence to keep off violence, and the use of it made lawful by the Law of Nature, *Vim vi, &c.* Yet *cum moderamine inculpate tutelae, & pro hac vice tantum.*

To kill an Offender, which shall attempt Feloniously to murder or rob me in my Dwelling-house or in or near any High-way, Cart-way, Horse-way or Foot-way; or that shall attempt Burglary, or Feloniously to break my Dwelling-house in the night: This is justifiable by my self, or by any of my Servants or Company, whom the said evil Doers shall attempt to rob or murder; or by any person being in my Dwelling-house, which the same evil Doers shall attempt so to break by night. ^{24 H. 8. 5. P. Forf. 1. 24 P. 8. c. H. 5. P. For. 1. Hob. p. 56. Cor. 5. 19. & 11. 28. Exod. 22. 2.}

And this being so found by Verdict upon Trial, we shall be all discharged without loss of Life, Land, or Goods, or Pardon, *24 H. 8. cap. 5. Stamsf. de Prerog. 46.*

To kill a Thief or Murderer, (*sc.* one which goeth about to Rob, or Murder me) in the defence of my Person, my House and Goods, was no Felony, but justifiable by the Common Law, before the Statute of *24 H. 8. cap. 5.* (which Statute doth also declare the Law to be so, and doth enact it) *Stamsf. 14. See Co. 5. 91. & 11. 82. Br. Coron. 100, 102.* And yet at the Common Law there was this difference, *sc.* That he which killed a Thief which would have robbed him upon the High-way, should forfeit Goods; but he which killed one who would have robbed or murdered him in his House, should forfeit nothing. *Co. 11. 82. See Exod. cap. 22, 23.* ^{26 Aff. 12. F. Cor. 261, 305. & 330.}

And if one or more come to burn my House, I, or any of my Servants may justifie to shoot forth of my House at them, or may issue forth, and kill them; for such intent of theirs is Felonious. *Br. Coron. 100.* ^{20 Aff. 24. Finch.}

If a Woman kill him that assaileth her to ravish her: This is justifiable by the Woman, without any Pardon. *Sir Fr. Ba. 34.*

‘ And in these Cases, *Se Defendendo* is a Plea for him, or her that is charged with the Death of another, saying, That they were driven to