

to that they did, in their own defence, the other so assaulting them;  
 &c.

If divers be in danger of Drowning, by the casting away of a Boat or Barge, and one of them gets to a Plank or on the Boats side, to keep himself above the Water, and another to save his life, thrust him from it; whereby he is drowned. This is neither *Se Defendendo*, nor by misadventure, yet justifiable. *Idem* 30.

And for this inevitable necessity *Bracton* giveth this Rule, *Si autem inevitabilis, quia occidit hominem sine odii meditatione, in metu & dolore animi se & sua liberando, cum aliter evadere non posset, non tenetur ad poenam homicidii, f. 120.*

If a Man imprisoned for Felony escape, and the Gaoler pursues him, but he resisteth and refuseth to yield himself, and thereby the Gaoler kills him; this is justifiable and not Man-slaughter. But otherwise it is in case the Imprisonment were for Debt. *Per Rolls Rep. part. 2. p. 187.*

But if a Man shall forcibly get, and keep possession of a House, and the other shall come in the night and fire this House, they within cannot justifie to shoot and kill him, or any of his company, for that they in the House were there unlawfully, See *Crompt. 26.*

§. 7. Prohibited

F. Cor. 305. Co. 5. 91.

If one cometh (in the day time) to my House, to beat me, and doth make an assault upon me in my House; and fighteth with me, and I kill him in defence of my person; yet in this case I shall forfeit my Goods, and must have the Kings Pardon, except it be found, that the Assailant came with a Felonious intent to kill or rob me.

And if one cometh (in the day time or in the night) to enter into my House, pretending title thereto, and to put me out of my possession, and I kill him: This seemeth to be Man-slaughter in me.

Stamf. 15. Speculum Jussic.

Note, if one kill a true Man, in defence of his person, there ought to be so great a necessity, that it must be esteemed to be inevitable, or otherwise it will not excuse, but that it is Felony, although that the other pursues him; and therefore he that shall be assaulted by a true Man, must first flie as far as he can, and till he be letted by some Wall, Hedge, Ditch, press of People, or other Impediment; so as he can flie no further without danger of his life, or of being wounded or maimed; and yet in such case, if he kill the other, he shall be committed till the time of his Tryal, and must then get his pardon for his Life and his Lands, (which pardon notwithstanding he shall have of course) but he shall lose and forfeit his Goods and Chattels; for the great regard which the Law hath of a Mans Life, *Fitz. Coron. 116. Co. 5. 91. b.* See hereof *Paulo antea, tit. Felony by Misadventure.*

The penalty

Co. 5. 91. 4 H. 7. 2. 6 E. 1. c. 9. P. Pardon 1. Stamf. 15.

*A.* maketh an affray upon *B.* and striketh *B.* and *B.* flieth so far as he can for saving his life, before any stroke given by *B.* and *A.* continueth his Assault; whereupon *B.* doth also strike *A.* and killeth him. This is Homicide in his own defence; otherwise it seemeth to some, if *B.* had struck the first blow, or had struck before he had fled; and yet by other good opinions, the first stroke or who began the affray, is not material; but the whole matter will consist upon the inevitable necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his life, &c. without killing *A.* for otherwise it will not excuse *B.* for *Cuncta prius tentanda*: And as it is a charitable; so it is a safe principle (in these cases) not to use an extremity, till thou hast tryed all means.

§. 8. Se Defendo.

F. Cor. 284 & 286 Stamf. 15.

Also it is holden in the former case, if *B.* (before he had fled) had striken *A.* and given him divers wounds, that yet if he flie to a strait before

150  
7 H. 6. 21.

ob. 134

H. 8. 5. Forf. 1. P. 8. c. 5. P. 1. ob. p. 26. dr. 5. 19. 11, 28. rod. 22.

Att. 12. Cor. 1. 305. 330.

Att. 24. ch.