

fore he give *A.* the mortal wound, and then he giveth his death's wound; this is Homicide in his own defence.

But in the former case, if *B.* upon malice premeditated had first stricken *A.* and then *B.* flieth to a strait or wall, and *B.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon. This is Murder in *B.* for the malice premeditated was the ground and beginner hereof. F. Cor. 387.  
Crom. 22.  
28.

Yet if there had been former malice between *A.* and *B.* and they meet suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given; flieth so far as he can; and *A.* pursueth him, and then *B.* killeth *A.* This seemeth to be Homicide in his own defence, notwithstanding the former malice.

*Copstones Case*: There was malice between *Copstone* and one *S.* and they had fought divers times, and after met suddenly in *London-street*, and *C.* told *S.* that he would fight with him, and *S.* answered, that he had nothing to say unto him; and *S.* went to the Wall, and after *C.* assaulted *S.* and then *S.* struck and killed *C.*; and it was found that *C.* began the affray, and *S.* was thereupon discharged, without forfeiting any thing. But that was by force of the Statute of 24 *H. 8. c. 5.* 15 El. Comp. 27

A Man in fight falleth to the ground, there his flying, &c. is not necessary, &c. See hereof before.

Also if a Thief assaults me to rob or kill me, I am not bound to flie to a Wall, &c. as I must in case a true Man assaults me. Stamf. 14

If an Officer of Justice or Minister of the Law, in the execution of his Office, be assaulted, he is not bound to flie to a Wall, &c. as other Subjects are. Co. 9. 98.

Also the Servant may justify the killing of another, in defence of his Masters Person or House, if the hurt cannot be otherwise avoided, *Br. Coron. 63.*

Also the Servant may justify the killing of him, who robbed and killed his Master, so that it be done presently. 21 H. 7. 35

In the defence of the possession of my Goods, I may justify to beat him that shall wrongfully take them from me; but I cannot justify to kill him, except he be a Thief.

So then, to kill a true Man in defence of my Person, in case where there is an inevitable necessity, (*sc.* that I first shall flie so far as I can for saving my life, &c.) This is no Felony of death, &c. But otherwise it is to kill a true Man in defence of the possession of my House, Lands or Goods, that is Man-slaughter (at least) as it seemeth. 23 Ed. 1.  
P. Forest  
Stamf. 13.  
14.

"In case of killing a Man *se Defendendo*, there must be *extrema necessitas*; for if a Man flying see a place, beyond which he cannot go, and before he come there, kill his pursuer. This is not justifiable, for he must go to the utmost place before he strike. Hob. 159

"*Sir Francis Bacon* taketh this difference in these former Cases of *se Defendendo*, *sc.* When the Law doth intend some fault or wrong in the party that hath brought himself in the necessity: This he calleth *Necessitas culpabilis*, and saith this to be the chief reason why *se ipsum defendendo* is not matter of Justification, but he must sue out his Pardon, and shall forfeit his Goods, because the Law intends it hath a beginning upon an unlawful cause; for Quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on either part; and it is hardly triable in whose default the quarrel began. But where I kill a Thief that assails to rob me (and the like) and I kill him, here there can be no malice or wrong presumed on my part. *Ba. 33.*