

have otherwise saved himself and escape the danger without committing slaughter in which case he is not to suffer death but only an arbitrary punishment. *Prosp. Garin. ibid. n. 354 & 355. Lambard. Crim. cap. 76 n. 4. Caspov. Crim. part 1. Lib. 30 n. 1823.* When one is he attacks another runs away and is killed in his flight having arms, the killer is liable only to an arbitrary punishment for that except of Unblamable defence. *Prosp. Garin. ibid. n. 385. 393. Caspov. ibid. n. 438 & 439.* Because the armed fugitive might probably have faced about again, and annoyed his pursuer. But if having disarmed his adversary who first attacks both pursue and kill him when forceless, and incapable to make resistance, it can hardly be denied, that he is punishable with death, *Caspov. ibid. n. 51.* It is disputed among the Doctors, if one attacks for his life is bound to give back and fly rather than Repel the assailant and Continued by the Generality of them that he ought not to run away if he finds himself in any danger by turning his back, but that he should do it when he may with safety. *Prosp. Garin. de homicid. c. 125 n. 124. Lambard. Crim. cap. 76 n. 8 cap. 76 n. 125 n. 124. Lambard. Crim. cap. 76 n. 8 cap. 76 n. 125 n. 124.* *Borluch. part 4. Book 13 n. 31. 32 Caspov. ibid. n. 54.* 56. V. G. When a person standing before his own house perceives his mortal adversary running full butt at him with a drawn sword, he ought to stop in and save himself from the clouds of fury by shutting the door rather than offer to Resist. Nor are soldiers or persons of high Rank and quality dispensed with more than others as to the necessity of offering the safety by flying from such an offer to attack them. *Caspov. ibid. n. 39 & 399.* Which cautious and Christian Method to Enter the Word less shedding of Blood, is no task upon any Mans honour. The

the opinion of wise and good Men: Whatever Motion the hot and inconsiderate part of Mankind are pleased to entertain of it. By the Law of England, one who is assaulted by another is not Excused for killing that other, tho' he gives back so far as he can with safety to the wall, hedge, River &c. beyond which he cannot go before he kills. *Book 3. Part 5. 6. He to ye. Cr. 41. 42. How* ^{just, plain, & simple, proper.} *And pl. Cr. lib. 3. Chap. 29 § 13 & 14.*

The Rule of self defence is understood with respect to the time, when Violence is Repelled by killing, not to intervene in the same Encounter without diverting to any Extraneous act, but as before first attacked the first blow, &c. separated, the person first attacked he turns and kills the aggressor. In which case the defender has only an arbitrary punishment, if he has not committed the fact in a way, at the time, &c. that he should before his passion was over. *Prosp. Garin. ibid. n. 403 Caspov. Crim. part 1. qu. 31 n. 27. 28. 29.* But he who gives the ordinary pains of death, if he is put upon and killed his adversary after a hour or longer time when he had of his anger was supposed to have cooled. Book de capit. 18 n. 7 *Caspov. ibid. n. 34. 35.* Or if he did that time his adversary was reconciled, however short the Intervall betwixt the first assault and the killing. *Caspov. ibid. n. 45.* Persons who are assaulted and kill a man in his Room, having a floor, and desired to their own Chamber in the same house, where the person formerly attacked and his assistant is coming in upon them when sitting peacefully one of the assistants was killed by them: the slaughter upon this ground, that only an arbitrary punishment upon this ground, that they were assaulted by the Justices presenting back his to them or thrusting at them with drawn swords, before they made any violent opposition to them. 1889 Night 1691 Master of Garbalt's