from the ordinary pain of death; Carpzov. ibid. n. 44. &
where even one positive witness cannot be had, Conjec
and Presumptions are in their opinion to be Received
Mascard. ibid. n. 16. Carpzov. ibid. n. 46 such as the Par
nole being Executed by the dying man. Carpzov. ibid.
56. Or his offering himself to a trial Immediately after
the slaughter Carpzov. ibid. n. 59. But the law of Sco
land allows not witnesses to be Received in Defence,
cept such as are liable to prove the libel. Upon the
nole witnesses are, Paterni paribus, more to be Jud
than the pursuers witnesses being Naturally
clined to go all Lengths in bringing off the Pannel, in
which account a Jurors of error were Introduced, M. 2.
Crim. parl. 1 Gil. 11 §5. Cylud in a Jurat for slaughter
Women were not Received as witnesses for proving
Pannels defence, in Regard there was no Witnesses
the time of Committing the slaughter 16 November 16
Andrew Rutherford.

Sect. 2.

Necessary Homicide with Respect to
publick Justice.

Necessary homicide with Respect to publick Justice
is Committed either in the Advancement or Execution of

1.

Necessary homicide committed in the
Advancement of Justice.

All the Kings liges were once Authorized as Just
to Kowden against Lake and Executile to the death the liges
land as border thieves and Sorners act 227 Parl. 14
J. 6. But that Law as to the Power of Executing
Seems to have been only temporary, and is now in
Disuse M. Kenzie Crim. part. 1 Gil. 34 §5.
Albeit it be lawfull to the Justices to find such
are absolvized from Capital punishment upon the Com

account of Casual homicide or homicide in Defence act 22
Parl. 1 Jas. 1 Ch. 2. Yet it was Declared Lawfull to the
pursuers of Common thieves and those Entering into houses
to Invade break or Destroy such houses by Fire or otherwise
to the intent and effect of stacking or Flaying the said thieves
or Robbers, without danger to be called in question for so
doing act 8 Par. 3. J. 5. act 23 Parl. 1 J. 6. And those who will
thieves or Robbers breaking houses in the Night, or will
the time of Masterfull Depredation, or will hold as assist
or Defend the Masterfull Depredators by arms, or forcibly
hinder the pursuit of them are Esse adjudged to the ordi
ry Punishment act 22 Parl. 1 Jas. 1 Ch. 2 provided the owner
of the goods stolen or Robbed or some in his Name Immed
diately after taking them away acquaint the Justice prin
cipal or Deputies of the Shire, or any Justice of peace or
Constable of the parish out of which the goods are taken
who shall upon such Intimation Require all Faithfull per
sons within the said parish to Concur in pursuit of the
goods and thieves. And Neither the owner of the goods taken
away, nor those obliged to Rise with him are to be called
in question for Raying hunting or Multilating in the pur
suit any of those thieves or Robbers or their associates,
act 6 Parl. 1 Jas. 2 Ch. 2. But it seems that such as shall
thieves or Robbers without giving such previous Intim
mation in manner aforesaid to the Sheriff, Justices of
peace or Constable of the Bounds are punishable
McKenzie Crim. part 1 Gil. 11 §3.

It is much Controverted by the Doctors of the Civil
law, whether it be lawfull to kill Banditti, a person at
the horn, Jul. Clar. lib. 5 § Homicidium n. 53 & Jogg. Prosp.
Farin. de Variis Quaestionibus qu. 103 n. 1 & Jogg. By the Law
of Scotland Robbers or outlaws are nominated or Declared
fugitives for Capital Crimes or such as Defend them
may be lawfully killed act 22 Parl. 1 Jas. 1 Ch. 2. Whether
upon the Publick account, or to satisfy private Re
sentment. And in both cases the Killer is free from
punishment, tho the Dangerous labour and Murder
Multitude or informalities which a private person is
Not obliged to know McKenzie Crim. part. 1 Gil. 11 §4.