

ARTICLE 200.

PRIVATE DEFENCE.

The intentional infliction of death or bodily harm is not a crime when it is inflicted by any person in order to defend himself or any other person from unlawful violence, provided that the person inflicting it observes the following rules as to avoiding its infliction, and inflicts no greater injury in any case than he in good faith, and on reasonable grounds, believes to be necessary when he inflicts it:—

(a.) ¹ If a person is assaulted in such a manner as to put him in immediate and obvious danger of instant death or grievous bodily harm, he may defend himself on the spot, and may kill or wound the person by whom he is assaulted.

(b.) ² If a person is unlawfully assaulted,

(i.) In his own house;

(ii.) ³ In the execution of a duty imposed upon him by law;

(iii.) ⁴ By way of resistance to the exercise of force which he has by law a right to employ against the person of another;

he may defend himself on the spot, and may use a degree of force for that purpose proportioned to the violence of the assault, and sufficient (in case iii.) to enable him not only to repel the attack made upon him, but to effect his original purpose; but a person using force in the execution of a duty imposed upon him by law, or in order to effect a purpose which he may by law effect in that manner, and not being assaulted, is not entitled to strike or hurt the person against whom he employs such force, merely because he is unable

¹ Coke, 3rd Inst. 55; 1 Hale, P. C. 482; 1 Hawk. P. C. 82; Foster, 273-5; 1 Russ. Cr. 540. This case is so nearly co-extensive with the first case mentioned in the last article that East does not notice them separately. Cases, however, may be imagined in which a sudden and violent assault would be no crime, and yet might be resisted by killing the assailant: see illustration (1).

² Staundford, 14s; Coke, 3rd Inst. 56; 1 Hale, P. C. 476, &c.; 1 Hawk. P. C. 87; Foster, 275-8; 1 East, P. C. 279-80.

³ In addition to the authorities in the last note: see 1 East, P. C. 287, 307; 1 Hale, P. C. 489.

otherwise to execute such duty or fulfil such purpose, except in the cases provided for in Article 199.

(c.) ¹ If a person is unlawfully assaulted by another without any fault of his own, and otherwise than in the cases provided for in clauses (a) and (b), but with a deadly weapon, it is his duty to abstain from the intentional infliction of death or grievous bodily harm on the person assaulting, until he (the person assaulted) has retreated as far as he can with safety to himself.

But any person unlawfully assaulted may defend himself on the spot by any force short of the intentional infliction of death or grievous bodily harm; and if the assault upon him is notwithstanding continued, he is in the position of a person assaulted in the employment of lawful force against the person of another.

(d.) ² If two persons quarrel and fight neither is regarded as defending himself against the other until he has in good faith fled from the fight as far as he can; but if either party does in good faith flee from the fight as far as he can, and if, when he is prevented either by a natural obstacle or any other cause of the same nature, from flying farther, the other

¹ See the authorities quoted for clauses (a), (b), and (c), and especially 1 Hale, P. C. 481. The qualification at the end of this rule is founded on the doctrine that any one may lawfully prevent or suppress by force a breach of the peace or affray (1 Hawk. P. C. 489; *R. v. Gomer*, 5 East, 308), from which it would seem to follow that a man who is himself assaulted may arrest his assailant, and on the doctrine that *non assensu dæmone* is a good defence to an indictment for assault (1 Hawk. P. C. 110). If this were not the law it would follow that any ruffian who chose to assault a quiet person in the street might impose upon him the legal duty of running away, even if he were the stronger man of the two. The passage of Hale appears to me to be applicable only to cases where deadly weapons are produced by way of bravado or intimidation, a case which no doubt often occurred when people habitually carried arms and used them on very slight provocation. In such a case it might reasonably be regarded as the duty of the person assaulted to retreat rather than draw his own sword, but I cannot think that Hale meant to say that a man who in such a case closed with his assailant and took his sword from him would be acting illegally, or that if in doing so the assailant were thrown down and accidentally killed by the fall the person causing his death would be guilty of felony. The minuteness of the law contained in the authorities on which this article is founded is a curious relic of a time when police was lax and brawls frequent, and when every gentleman wore arms and was supposed to be familiar with the use of them. It might, I think, be simplified in the present day with advantage.

² See the authorities for clause (d).