

CORPUS JURIS

BEING

A COMPLETE AND SYSTEMATIC STATEMENT
OF
THE WHOLE BODY OF THE LAW

AS EMBODIED IN AND
DEVELOPED BY

ALL REPORTED DECISIONS

EDITED BY

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The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. But this progress must be by analogy to what is already settled.

GREENE, C. J., in *1 R. I.* 356.

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alleged to have been spoken by him, he cannot be convicted unless the words are spoken in the hearing of the persons engaged in the assault."⁷³

VI. JUSTIFIABLE OR EXCUSABLE HOMICIDE⁷⁴

[BY STANLEY A. HACKETT]

[§ 184] A. In General.—1. What Constitutes—a. In General. Concrete illustrations of classes of cases arising and treated under the headings of exercise of authority or duty,⁷⁵ accident or misfortune,⁷⁶ duress or compulsion,⁷⁷ self-defense,⁷⁸ and defense of habitation,⁷⁹ property,⁸⁰ or of another person,⁸¹ are deemed to furnish better and safer guides for the determination of what does or does not constitute excusable⁸² or justifiable⁸³ homicide than abstract definitions. Even statutory definitions and rules may fall short of a statement of the law as it has been interpreted and established by precedents and authorities of long and recognized standing.⁸⁴

[§ 185] b. Justifiable Homicide. Justifiable homicide is the necessary killing of another in the performance of a legal duty or where the slayer, not being himself at fault, had a legal right so to kill.⁸⁵ It is a homicide authorized by law.⁸⁶ Homicide may be justifiable because it is committed by an officer in the execution of a legal sentence;⁸⁷ because it is committed to prevent the commission of felony,⁸⁸ to suppress a riot,⁸⁹ to effect an arrest of a felon, or to prevent his escape;⁹⁰ or because it is committed in necessary self-defense,⁹¹ or in defense of habitation,⁹² of property,⁹³ or of another's person.⁹⁴

[§ 186] c. Excusable Homicide. Excusable homicide is where the slayer, although himself at fault, had the legal right so to kill, or where the killing was the accidental result of a lawful act done in a lawful manner.⁹⁵ Excusable homicide

has also been defined as that not properly justifiable but allowable under certain circumstances, for example, defense of one's own person, or that of some member of one's household, as wife, children, or servant,⁹⁶ or as that which takes place under such circumstances of accident or necessity that the party cannot be strictly said to have committed the act willfully and intentionally.⁹⁷ It is committed either by misadventure or accident,⁹⁸ or in self-defense upon a sudden affray.⁹⁹

[§ 187] d. Under Statute. Within certain limits the legislature may prescribe the conditions under which homicide may be excusable or justifiable;¹ but it cannot deprive a person who is not a wrongdoer of the right of self-defense.² In many jurisdictions justifiable and excusable homicide are defined by statute.³ The statutory definitions are in the main a reenactment of the common law.⁴ However, in a few instances the statutes have gone further than the common law. Thus, under the statutes of a few states, homicide is justifiable when committed by anyone in a sudden heat of passion caused by the attempt of another to rape or otherwise defile his wife, daughter, sister, mother, or other family relation, or when the defilement has actually been committed.⁵ It being essential under such a statute that accused act while in a sudden heat of passion, his act must follow so closely, in point of time, the acquisition of knowledge of the defilement or attempt to defile as not to allow sufficient intervening time for reflection, deliberation, and the cooling of passion.⁶ And,

73. Cabbell v. State, 46 Ala. 195.
74. Cross references:
Defenses in prosecution for assault with intent to murder see supra §§ 173-182.
Incapacity of accused as defense see supra §§ 8-29.
Justifiable or excusable homicide as defense to civil action for death see Death § 104.
75. See infra 190-204.
76. See infra 263-271.
77. See infra 272.
78. See infra 205-253.
79. See infra 262-265.
80. See infra § 266, 267.
81. See infra § 259-261.
82. Patten v. Peo., 18 Mich. 314, 330, 100 Amd 173.

"A correct idea of excusable homicide is not perhaps easily expressed by a brief abstract definition, without special reference to the facts of particular cases. We accordingly find the latter mode adopted in all the books. It has been thought safer to illustrate by particular instances, than to undertake to define, in advance, all the particular elements or combinations of facts which may render homicide excusable. Of course, the enumeration of particular cases does not exclude any others falling within the like principles." Patten v. Peo., supra.

83. Richardson v. State, 7 Tex. A. 486.

84. Richardson v. State, supra.

85. 1 Hawkins P. C. c 23. To same effect State v. Rhodes, Houst. Cr. (Del.) 476; Anderson L. D. p 513; Black L. D. p 674.

[a] "Justifiable homicide" and "excusable homicide" are not synonymous terms.—Burton v. State, (Okla. Cr.) 185 P 842.

86. State v. Walker, 14 Del. 464, 33 A 227.

87. See infra § 203.

88. See infra §§ 191-193.

89. See infra 200.

90. See infra §§ 194-199.

91. See infra §§ 205-253.

92. See infra §§ 262-265.

93. See infra §§ 266, 267.

94. See infra § 259-261.

95. 1 Hawkins P. C. c 29. See also Anderson L. D. p 513; Black L. D. p 453.

96. State v. Walker, 14 Del. 464, 33 A 227.

97. Williamson v. State, 2 Oh. Cir. Ct. 292, 1 Oh. Cir. Dec. 492.

[a] Intentional killing excluded.

"Every definition of excusable homicide requires that the killing be by accident, or accident and misfortune, and excludes the idea of an intentional killing." Shufflin v. Peo., 62 N. Y. 229, 237, 20 AmR 483.

98. See infra §§ 268-271.

99. See infra § 205.

1. Peo. v. McDonald, 32 Cal. A. 694, 163 P 1046.

2. See infra § 207.

3. Ark.—Harris v. State, 34 Ark. 469.

4. Colo.—Bailey v. Peo., 54 Colo. 337, 130 P 332.

5. Fla.—Ward v. State, 75 Fla. 756, 79 S 699; Olds v. State, 44 Fla. 452, 33 S 296; Richard v. State, 42 Fla. 528, 29 S 413.

6. Ga.—Hill v. State, 64 Ga. 453; Thompson v. State, 55 Ga. 47; Keener v. State, 13 Ga. 194, 63 Amd 269.

7. Ida.—State v. Creas, 10 Ida. 88, 76 P 1013.

8. Ill.—Peo. v. Thomas, 272 Ill. 558, 112 NE 354; Shepherd v. Peo., 72 Ill. 480; Hopkinson v. Peo., 18 Ill. 264.

9. Kan.—State v. Hatch, 57 Kan. 420, 46 P 708, 57 AmSR 337.

10. Mont.—State v. Smith, 12 Mont. 378, 30 P 679.

11. N. M.—Terr. v. Baker, 4 N. M. 117, 13 P 30.

12. N. Y.—Peo. v. Fitzsimmons, 34 NYS 1102.

13. N. D.—State v. Lehman, 44 N. D. 572, 175 NW 736.

14. Okl.—Armstrong v. State, (Cr.) 143 P 870.

15. Or.—State v. Yee Guck, 98 Or. 231, 195 P 363.

16. Porto Rico.—Peo. v. Sutton, 17 Porto Rico 327.

17. S. D.—State v. Stumbaugh, 28 S. D. 50, 132 NW 666; State v. Yokum, 11 S. D. 544, 79 NW 835.

18. Utah.—State v. Terrell, 55 Utah 314, 186 P 108.

19. Wash.—State v. Smith, 115 Wash. 405, 197 P 770.

20. Wis.—Krueger v. State, 171 Wis. 566, 177 NW 917.

21. See also Callihan v. Johnson, 22 Tex. 596 (as to statutory right to kill a slave).

22. 4. Carpenter v. State, 62 Ark. 286, 36 SW 900.

23. 5. State v. Botha, 27 Utah 289, 75 P 731; Peo. v. Halliday, 5 Utah 467, 17 P 118.

[a] The statute is intended (1) to provide that certain facts and circumstances which at common law would reduce the offense to manslaughter shall constitute a complete justification. State v. Botha, 27 Utah 289, 75 P 731. (2) Consequently proof of facts and circumstances which would be insufficient to reduce the offense to manslaughter at common law is insufficient to justify the homicide under the statute. State v. Botha, supra.

Common-law rule as to homicide committed to avenge past wrongs see infra § 188.

6. State v. Botha, 27 Utah 289, 75 P 731; Peo. v. Halliday, 5 Utah 467, 17 P 118.

by reason of statutory provisions in a few states, the killing of a person after he has committed a certain offense, such as adultery,⁷ burglary, or theft at night,⁸ is, under certain circumstances, justifiable.

[§ 188] 2. **Matters Not Constituting.** The intentional taking of human life can be justified only by the mandate of the law, or upon the ground of necessity.⁹ A homicide is not justified by any kind of provocation unaccompanied with acts of violence,¹⁰ especially where the provocation is past and defendant's heat of passion has had time to cool.¹¹ And, unless expressly so provided by statute,¹² the killing of a human being in heat of passion does not constitute justifiable homicide,¹³ but merely has the effect of reducing the crime to manslaughter.¹⁴ Mere words,¹⁵ threats,¹⁶ or insulting or opprobrious epithets,¹⁷ do not furnish a justification for taking human life. Anything unknown to accused at the time of the killing cannot afford him justification.¹⁸ Miscellaneous matters held not to be sufficient, of themselves, to justify a homicide include: The fact that deceased was tall and of athletic build;¹⁹ the making of a proposal of marriage by deceased to a daughter of accused;²⁰ a religious delusion;²¹ the fact that deceased placed accused's name on a black, unfair, or debarred list²² or failed to deliver to him a letter of recommendation belonging to him;²³ that the victim, who was the mother-in-law of accused, notified him to stay away from her home where his wife

and children were;²⁴ and the fact that a reward has been offered by officers of the state for the killing of deceased.²⁵

Excuse. Accused is not entitled to be acquitted upon the ground of excusable homicide merely because he killed deceased in a sudden difficulty.²⁶ A homicide is not excused merely because deceased did not answer when hailed or called.²⁷

Justification or excuse. It is important that the taking of human life be not excused or justified except in strict accordance with the established law.²⁸ The idea of prevention or defense against an impending or progressing wrong must enter into all cases of justifiable homicide²⁹ by a private person. There is neither legal justification nor excuse for a private person attempting to take the law into his own hands and deliberately killing to inflict punishment or vengeance for past crimes or wrongs to himself or members of his family, no matter how serious or heinous such wrongs or crimes may be.³⁰ The rule is applicable even where the past wrongs of deceased were inflicted on the wife, daughter, or other female relative of accused and consisted of improper attentions, insulting conduct, or even rape, seduction, or adultery.³¹ And infidelity, undue intimacy, or even illicit relations by one spouse with a third person do not furnish legal justification or excuse for the taking of the life of that spouse by the other spouse.³² The mere fact that a person is of bad or low character,³³ or of shady ante-

1. See infra § 218.
 2. See infra § 215.
 3. Wadsworth v. State, 9 Okl. Cr. 130 P 808.
 4. N. C.—State v. Boon, 82 N. C. 37.
 5. Oh.—State v. Elliott, 11 Oh. Dec. (Reprint) 332, 26 CincL Bul 116 (1881).
 6. Pa.—Com. v. Shurlock, 14 LegInt Com. v. Smith, 6 AmLReg 257.
 7. Tex.—Todd v. State, (Cr.) 44 SW 2d 31.
 8. Va.—Hite v. Com., 96 Va. 489, 31 SE 895.
 9. Rogers v. State, 117 Ala. 9, 22 S 666; Perry v. State, 102 Ga. 365, 33 SE 903; State v. Rodman, 173 Mo. 51, 73 SW 605; Orange v. State, (Cr.) 83 SW 385.
 10. See supra § 187.
 11. Peo. v. Ashland, 20 Cal. A. 168, 138 P 798.
 12. See supra § 114.
 13. Coleman v. State, 149 Ga. 186, 93 SE 627; Taylor v. State, 181 Ga. 63 SE 296; State v. Hanlon, 38 Mont. 557, 100 P 1035.
 14. See infra § 237.
 15. State v. Ballance, 207 Mo. 607, 104 SW 60; Turner v. State, 4 Okl. Cr. 164, 111 P 988.
 16. Best v. State, 26 Ga. A. 671, 37 SE 266.
 17. Peo. v. Diaz, 16 Porto Rico 29.
 18. Lassiter v. State, 137 Ark. 273, 208 SW 21.
 19. Reg. v. Machekequonabe, 28 Ont 309.
 20. Warner v. Com., 84 SW 742, 27 KyL 219.
 21. Warner v. Com., supra.
 22. State v. Bramlett, 114 S. C. 103 SE 755.
 23. State v. Gut, 13 Minn. 341.
 24. Wadsworth v. State, 9 Okl. Cr. 130 P 808.
 [a] **A contrary doctrine** would be a monstrous one "pregnant with danger to human life and utterly destructive of the peace and good order of society. . . . This would be but to license desperate men to go around armed with deadly weapons and shoot down their fellow men upon the slightest provocation and escape punishment, provided only the shooting was done upon a sudden difficulty. This would be the rule of anarchy, not of law." Wads-

worth v. State, 9 Okl. Cr. 84, 92, 130 P 808.
 27. State v. Jones, 104 S. C. 141, 88 SE 444.
 28. Smith v. State, 14 Okl. Cr. 250, 174 P 1107.
 29. Gaillard v. State, 149 Ga. 190, 99 SE 629; Brown v. State, 135 Ga. 656, 70 SE 329; Mize v. State, 135 Ga. 291, 69 SE 173; Ward v. State, 25 Ga. A. 296, 103 SE 726.
 30. State v. Powell, 21 Del. 24, 61 A 966; Gaillard v. State, supra; Brown v. State, supra; Mize v. State, supra; Gossett v. State, 123 Ga. 431, 51 SE 394; Perry v. State, 102 Ga. 365, 30 SE 903; Wilkerson v. State, 91 Ga. 729, 735, 17 SE 990, 44 AmSR 63; Hill v. State, 64 Ga. 453; Ward v. State, 25 Ga. A. 296, 103 SE 726; Stivers v. Com., 6 KyL 95, 12 Ky. Op. 657; Litchfield v. State, 8 Okl. Cr. 164, 126 P 707, 45 LRANS 153.
 [a] **Wrongs in foreign country.**—Atrocious wrongs perpetrated on accused and his relatives in a foreign country furnish no legal excuse for his violation of the laws of this country by taking the life of another, especially where the person slain had not done accused or his kindred any wrong but had simply refused aid to his revolutionary purposes. Peo. v. Hampartjoomian, 196 N. Y. 77, 69 NE 451.
 31. Ark.—Fisher v. State, 149 Ark. 48, 231 SW 181.
 32. Ga.—Ellison v. State, 137 Ga. 193, 73 SE 255 [expl Biggs v. State, 29 Ga. 723, 76 AmD 630 on the ground that the facts and points actually decided were different from a case involving a killing merely in revenge for a past offense]; Patterson v. State, 134 Ga. 264, 67 SE 816; Perry v. State, 102 Ga. 365, 30 SE 903; Wilkerson v. State, 91 Ga. 729, 17 SE 990, 44 AmSR 63; Farmer v. State, 91 Ga. 720, 18 SE 987; Jackson v. State, 91 Ga. 271, 18 SE 298, 44 AmSR 22; Mays v. State, 88 Ga. 399, 14 SE 560; Cloud v. State, 81 Ga. 444, 7 SE 641; Hill v. State, 64 Ga. 453.
 Mo.—State v. Stewart, 278 Mo. 177, 212 SW 853; State v. Herrell, 97 Mo. 105, 10 SW 387, 10 AmSR 289.
 Okl.—January v. State, (Cr.) 181 P 514.
 Tex.—Hobbs v. State, 55 Tex. Cr. 299, 117 SW 811.

[a] **The law does not permit** the relatives of a young woman who has been seduced to take shotguns and go out and kill the seducer. Doran v. State, 141 Ark. 442, 217 SW 485 (so stating in passing on the remarks of the prosecuting attorney in a prosecution for seduction).
 [b] **The so-called unwritten law** (1) namely, the right to avenge a wrong done a female member of one's family by killing the wrongdoer, does not exist. Almerigi v. State, (Okl. Cr.) 188 P 1094; January v. State, (Okl. Cr.) 181 P 514. (2) By this is meant that the law does not recognize the act as one upon which self-defense or legal justification can be based. Almerigi v. State, supra.
 [c] **Communications to accused.**—(1) The fact that deceased communicated to accused the fact that he had had illicit intercourse with the latter's wife does not justify the homicide. Jordan v. State, 78 Tex. Cr. 651, 182 SW 890. (2) And communications made by accused's wife to him after the homicide regarding improper proposals by deceased will not justify the homicide. Best v. State, 26 Ga. A. 671, 107 SE 266.
Killing to protect wife or daughter from present or future sexual offenses see infra §§ 218, 261.
 32. Jackson v. State, 135 Ga. 684, 70 SE 245; Rogers v. State, 128 Ga. 67, 57 SE 227, 119 AmSR 364, 10 LRANS 999; Com. v. Scherer, 266 Pa. 210, 109 A 867; Ott v. State, (Tex. Cr.) 235 SW 903.
 33. Del.—State v. Reese, 25 Del. 434, 79 A 217.
 Fla.—Thomas v. State, 47 Fla. 99, 36 S 161.
 Ga.—Crawley v. State, 137 Ga. 777, 74 SE 537.
 Ill.—McDonnall v. Peo., 168 Ill. 93, 48 NE 86.
 Mo.—State v. Miles, 253 Mo. 427, 161 SW 766; State v. Hardy, 95 Mo. 455, 8 SW 416.
 Okl.—Thompson v. State, 6 Okl. Cr. 50, 75, 117 P 216.
 "No man has the right to take the law in his own hands and constitute himself sheriff, judge, jury and executioner, and of his own motion arrest, try, convict, and execute another man simply upon the

cedents,³⁴ does not furnish the least justification or excuse for the taking of his life. The fact alone that deceased cursed accused does not justify or excuse the homicide.³⁵ It is said that a homicide is never justifiable or excusable where the slayer is at the time violating some law.³⁶ A homicide is neither justified nor excused by a mistake of law as to the slayer's right to take life.³⁷ But a person is not criminally responsible for a homicide committed by him by reason of a mistake as to the facts where his ignorance or mistake is not due to negligence or bad faith on his part and where he would be exempt from criminal liability if the facts were as he supposed them to be.³⁸

It is no defense to a son who has killed his father that the latter had reared him badly.³⁹ The contributory negligence of deceased is not a defense in a prosecution for murder or manslaughter.⁴⁰ In fact, any defense based on the imbecility or incapacity of deceased to foresee the danger and avoid its consequences is not allowable in a criminal prosecution for manslaughter.⁴¹

[§ 189] **3. Distinctions; Exemption from Liability.** Formerly the perpetrator of an excusable homicide suffered forfeiture of his goods,⁴² while in case of justifiable homicide he forfeited nothing;⁴³ but such forfeitures have been abolished, the distinction is now regarded as obsolete,⁴⁴ and accused is entitled to a full acquittal and discharge where the homicide is either justifiable or excusable.⁴⁵ However, some courts hold that, while there must be an entire acquittal whether the killing is excusable or justifiable, nevertheless some of the distinctions between the two kinds of homi-

cide, such as the duty to retreat in one but not in the other, should not be ignored.⁴⁶ In some states the distinction between excusable and "justifiable homicide" is expressly abolished by statute and the latter term alone is employed.⁴⁷

[§ 190] **B. Exercise of Authority or Duty—**

1. In General. Where a public officer, or one acting under his authority, in the exercise of his duty as such, takes another's life by unavoidable necessity without any will, intention, desire, negligence, or inadvertence on his part and therefore without blame,⁴⁸ as where an officer in the due execution of his office kills a person who assaults or resists him,⁴⁹ or where an officer, in punishing a criminal within bounds of moderation and within the limits of the law, unfortunately kills him,⁵⁰ the homicide is justifiable or excusable; but not where it is committed in excess of such officer's authority or duty.⁵¹ The mere fact that a person is a peace officer does not justify him in taking life otherwise than in the execution of duties of his office.⁵²

[§ 191] **2. Prevention of Offenses⁵³—a. In General.** The taking of human life is justifiable when done for the prevention of any atrocious crime attempted to be committed with force.⁵⁴

[§ 192] **b. Felonies.⁵⁵** According to the common law, it is the duty of every one, seeing any felony attempted, by force to prevent it, if need be, by the extinguishment of the felon's existence.⁵⁶ A homicide is justifiable when committed by necessity and in good faith in order to prevent a felony attempted by force or surprise, such as murder, robbery, burglary, arson, rape, sodomy, and the like.⁵⁷ In applying the rule no distinction

ground that the man so executed was a bad man. If this was the law no man would be safe. Every man who amounts to anything has enemies, and it could always be proven by them that he was a bad man." *Thompson v. State*, supra.

Evidence of character of deceased see infra § VIII, B, 19, d (2).

34. *U. S. v. Colonel*, 30 Philippine 112.

35. *Coulter v. State*, 72 Tex. Cr. 602, 162 SW 885.

36. *Wiley v. State*, 19 Ariz. 346, 170 P 869, LRA1918D 373.

37. *Peo. v. Cook*, 39 Mich. 236, 33 AmR 380.

38. *U. S. v. Ah Chong*, 15 Philippine 488; *Levett's Case*, [cit Cook's Case, Cr. Car. 538, 79 Reprint 1063].

[a] **Mistake as to identity.**—Where accused was mistaken as to the identity of deceased and really believed that he was killing another person he is entitled to all the defenses he would have been entitled to if his belief had been correct. *Wilson v. State*, 70 Tex. Cr. 355, 156 SW 1185.

Accident or misadventure see infra §§ 268-271.

Mistake as to danger to slayer acting in self-defense see infra § 229.

39. *Hargis v. Com.*, 135 Ky. 578, 123 SW 233 (where accused claimed that his father had taught him to carry a weapon, encouraged him to drink whisky, and caused him to associate with disreputable men).

40. *State v. Hanahan*, 111 S. C. 58, 96 SE 667.

Involuntary manslaughter see supra § 141.

41. *State v. Elliott*, 94 N. J. L. 76, 110 A 135.

42. 1 *Hawkins P. C. c. 28*. See *Com. v. Long*, 17 Pa. Super. 641 (stating the former rule).

43. See *Com. v. Long*, supra (stating the former distinction).

44. *Foster Cr. Cas.* p 288.

45. *State v. Brown*, 16 Del. 380, 36 A 458; *State v. Powell*, 54 Mont.

217, 169 P 46; *Erwin v. State*, 29 Oh. St. 186, 23 AmR 733; *Com. v. Long*, supra.

[a] **Excusable homicide is not unlawful** and the person committing it is not guilty of any offense. *Kent v. State*, 3 Fla. 51, 43 S 773.

46. *Erwin v. State*, 29 Oh. St. 186, 23 AmR 733.

Duty to retreat see infra §§ 238-248.

47. *Keener v. State*, 18 Ga. 194, 63 AmD 269; *Hudgins v. State*, 2 Ga. 173.

48. *State v. Dugan*, *Houst. Cr. (Del.)* 563; *Bassett v. State*, 44 Fla. 12, 33 S 262; *Richard v. State*, 42 Fla. 528, 29 S 413; *Lynn v. Peo.*, 170 Ill. 527, 48 NE 964; *Kilpatrick v. Com.*, 3 Phila. (Pa.) 237.

[a] **Some statutes provide** that a homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience to any judgment of a competent court, or when necessarily committed in overcoming actual resistance to the execution of some legal process, or the discharge of any other legal duty. *Richard v. State*, 42 Fla. 528, 29 S 413.

49. *State v. Lodge*, 14 Del. 542, 33 A 312; *State v. Dugan*, *Houst. Cr. (Del.)* 563; *State v. Rhodes*, *Houst. Cr. (Del.)* 476; *Lynn v. Peo.*, 170 Ill. 527, 48 NE 964.

50. See infra § 268.

51. *State v. Coit*, 8 OhS&CP 62, 35 CincL&U 82.

[a] **Illustration.**—Where the only danger to be feared by officers within a building from a mob outside is the breaking in of the door, the order of such an officer to fire on the mob cannot be justified or excused on the ground that such officer was endeavoring to protect public property; and if a person outside is killed by reason of such order the officer giving the order must show by a preponderance of evidence that he was legally justified and excused

in giving the order. *State v. Coit*, 8 OhS&CP 62.

52. *McIntire v. Com.*, 191 Ky. 299, 230 SW 41.

53. Defense of property or habitation against crime see infra §§ 262-265.

54. *Williams v. State*, 44 Ala. 41; *State v. Watson*, 26 Del. 273, 82 A 1086; *State v. Blackburn*, (Del.) 75 A 536; *State v. Miller*, 14 Del. 564, 32 A 137; *State v. Lodge*, 14 Del. 542, 33 A 312; *State v. Rhodes*, *Houst. Cr. (Del.)* 476.

55. Felonious attack by deceased as:

Affecting duty to retreat see infra § 241.

Element of defense of:
Another person see infra § 259.

Habitation see infra § 262.
Property see infra § 266.

Self see infra § 242.

56. *Carpenter v. State*, 62 Ark. 286, 36 SW 900.

[a] **"This is a public duty, and the discharge of it regarded as promotive of justice."** *Carpenter v. State*, 62 Ark. 286, 308, 36 SW 900.

Neglect to prevent commission of felony as misprision of felony see *Criminal Law* § 13.

Right of private citizen to prevent commission of felony generally see *Criminal Law* § 3256.

57. *Ala.—Osborne v. State*, 140 Ala. 84, 37 S 105; *Oliver v. State*, 17 Ala. 587.

Cal.—Peo. v. Grimes, 132 Cal. 30, 64 P 101.

Conn.—State v. Moore, 31 Conn. 479, 83 AmD 159.

Fla.—Bassett v. State, 44 Fla. 12, 33 S 262; *Mitchell v. State*, 43 Fla. 188, 30 S 803; *Richard v. State*, 42 Fla. 528, 29 S 413; *Lovett v. State*, 30 Fla. 142, 11 S 550, 17 LRA 705.

Ga.—Ragland v. State, 111 Ga. 211, 36 SE 682; *Horton v. State*, 110 Ga. 739, 35 SE 659; *Teasley v. State*, 104 Ga. 738, 30 SE 938; *Crawford v. State*, 90 Ga. 701, 17 SE 628, 35 AmSR 242; *Newman v. State*, 60 Ga.

trespasser.⁴⁰

[§ 217] (f) **Carrying Arms.** It has been held that the mere fact that accused arms himself after deceased arrives at the scene of the homicide may have a tendency to provoke a deadly combat.⁴¹ Generally, however, it is only in connection with other facts that the act of accused in arming himself is important in determining whether or not he provokes the difficulty which results in the killing.⁴² The mere fact that defendant had a dangerous weapon and used it does not take away the right of self-defense if without that fact the right would have existed.⁴³ And the fact that a person is carrying a weapon unlawfully does not deprive him of the right to use it in his necessary self-defense.⁴⁴ A person who arms himself, not for purposes of aggression, but in anticipation of a possible attack and for the sole purpose of necessary self-defense, may exercise the right of self-defense where he does nothing else or nothing wrongful to provoke or bring on a difficulty.⁴⁵

[§ 218] (g) **Criminal Intercourse with Wife or Daughter of Another or Resentment Thereof.**⁴⁶ **Killing of husband by wife's paramour.** Sexual intercourse with the wife of another is a wrong so obviously calculated to bring on a difficulty with the husband, that if the paramour when caught in the act or just after it is over kills the husband in order to save himself from death or great bodily harm, he cannot invoke the doctrine of self-defense as a justification or excuse,⁴⁷ except where the husband attempts to kill him in vengeance for past wrongs, as where, knowing of his wife's infidelity, he deliberately lays a trap for her paramour in

order to kill him if caught in the act.⁴⁸ However, it is held in some jurisdictions that illicit intercourse with the wife of another is not such a provocation or bringing on a difficulty as to deprive the paramour of the right of self-defense.⁴⁹ The right of self-defense is not forfeited by the fact that some time prior to the homicide accused had intercourse with the wife of deceased.⁵⁰

Killing of wife or her paramour by husband. The doctrine as to aggression in respect generally to that of self-defense should be relaxed where a husband kills his wife or her paramour in self-defense in a struggle ensuing from his attack upon her and her paramour in or immediately after the act of adultery.⁵¹ But where the husband, armed with a deadly weapon, breaks into the house or apartment of the paramour, while the latter is asleep, under circumstances sufficient to cause on the part of the paramour a reasonable apprehension of death or great bodily harm, the husband is the aggressor and precluded from setting up self-defense.⁵²

Killing of father by seducer of daughter. Engaging in illicit sexual intercourse with the daughter of deceased is a wrongful act reasonably calculated to provoke an attack by deceased and therefore deprives accused of the right of self-defense where he is found in such intercourse at the time of the homicide,⁵³ but not where it occurred some time prior thereto.⁵⁴

[§ 219] (h) **Exercise of Legal Right.**⁵⁵ The exercise of a legal right in a lawful manner is not such an act of provocation as will deprive the person exercising it of his right of self-defense,⁵⁶ although, having reason to believe that it

stitute a provocation of the difficulty so as to place him beyond the protection of the law of self-defense. State v. Sinclair, 250 Mo. 278, 157 SW 339.

[b] **Inquiring purpose of trespasser.**—A person has a right to inquire the purpose of a person coming through his premises and to carry a gun for self-defense, if attacked. Patterson v. State, 75 Miss. 670, 23 S. 647.

40. Ala.—Gibson v. State, 91 Ala. 64, 9 S. 171.

Cal.—Peo. v. Honshell, 10 Cal. 83.

Del.—State v. Talley, 14 Del. 417, 33 A. 181.

Okl.—Smith v. State, 14 Okl. Cr. 250, 174 P. 1107.

Tex.—McGlothlin v. State, (Cr.) 53 SW 869.

41. Terry v. State, 15 Ala. A. 665, 74 S. 756.

42. See supra §§ 212-214; infra §§ 220-222.

43. Foutch v. State, 95 Tenn. 711, 34 SW 423, 45 LRA 687; Cottom v. State, (Tex. Cr.) 240 SW 918;

Knight v. State, 66 Tex. Cr. 335, 147 SW 268.

[a] **The mere drawing of a pistol by one who begins a quarrel** will not deprive him of the right to use it in self-defense unless he draws it with the intent to attack the adversary's life, or under circumstances calculated to excite in the adversary a reasonable fear that an immediate attack upon him is intended, if his adversary afterward draws a pistol and shoots first. Fussell v. State, 94 Ga. 78, 19 SE 891.

44. Moore v. State, 109 Ark. 475, 160 SW 206; State v. Bowling, 3 Tenn. Cas. 110.

45. Lett v. State, 1 Ala. A. 18, 56 S. 5; Echols v. State, 99 Miss. 683, 55 S. 485; State v. Blair, 2 N. J. L. J. 346; Torrez v. State, 83 Tex. Cr. 475, 204 SW 228; Medford v. State, 86 Tex. Cr. 237, 216 SW 175; Parker v. State, 81 Tex. Cr. 397, 196 SW 537;

Gray v. State, 55 Tex. Cr. 90, 114 SW 635, 22 LRA 513.

Arming by threatened person see infra § 219.

46. **Defense of wife or daughter as excuse or justification** see infra § 261.

47. Dabney v. State, 113 Ala. 38, 21 S. 211, 59 AmSR 92; Wilkerson v. State, 91 Ga. 729, 17 SE 990, 44 AmSR 63; Drysdale v. State, 83 Ga. 744, 10 SE 358, 20 AmSR 340, 6 LRA 424.

[a] **Although accused is in a public alley, yet where he is armed with a deadly weapon and is lurking about the alley for the sole purpose of debauching the wife of deceased, he is not in a place where he has a right to be and without fault.** Duncan v. State, 171 Ind. 444, 86 NE 641.

48. Wilkerson v. State, 91 Ga. 729, 17 SE 990, 44 AmSR 63.

49. State v. Larkin, 250 Mo. 218, 157 SW 600, 46 LRA 13. See Peo. v. Watson, 165 Cal. 645, 133 P. 298 (stating, in a case where accused apparently did not know that deceased's wife was married, that "while defendant's conduct with the woman was immoral, it did not take away from him the natural right of self-defense").

50. Sheely v. State, 83 Tex. Cr. 127, 201 SW 1012; Pannell v. State, 54 Tex. Cr. 498, 113 SW 536.

51. State v. Cancienne, 50 La. Ann. 847, 24 S. 134.

52. State v. Agnesi, 92 N. J. L. 53, 104 A. 299 [aff. 92 N. J. L. 638, 106 A. 893, 108 A. 115].

53. State v. Emerson, 78 S. C. 83, 58 SE 974.

54. Brown v. State, 135 Ga. 656, 70 SE 329.

55. **Making or resistance of arrest as aggression** see infra §§ 255, 257.

56. Ala.—Cheney v. State, 178 Ala. 44, 59 S. 604; Cheney v. State, 172 Ala. 368, 55 S. 801; Zaner v. State, 90 Ala. 651, 8 S. 698.

Cal.—Peo. v. Stone, 82 Cal. 36, 22 P. 975; Peo. v. Batchelder, 27 Cal. 69, 85 AmD 231. But see Peo. v. Webster, 13 Cal. A. 348, 354, 109

P. 637 ("We do not believe . . . that a person can deliberately persist in the immediate exercise of a mere technical right when he has reason to know that by so doing he will be placed under the necessity of killing a human being in self-defense").

Miss.—Ayers v. State, 60 Miss. 709.

Mo.—State v. Matthews, 148 Mo. 185, 49 SW 1085, 71 AmSR 594;

State v. Harrod, 102 Mo. 590, 15 SW 373.

Or.—State v. Goodager, 56 Or. 198, 106 P. 638, 108 P. 185.

S. C.—State v. Douglas, 115 S. C. 483, 101 SE 648, 8 ALR 656.

Tex.—Humphrey v. State, 73 Tex. Cr. 433, 165 SW 589; Cole v. State, 48 Tex. Cr. 439, 88 SW 341; Gilcrease v. State, 33 Tex. Cr. 619, 28 SW 531;

Milraire v. State, 33 Tex. Cr. 577, 28 SW 537; Ball v. State, 29 Tex. A. 107, 14 SW 1012.

Va.—Hash v. Com., 88 Va. 172, 15 SE 398.

Wash.—State v. Rader, 203 P. 68.

[a] **Illustrations.**—(1) The act of accused in merely exercising his right to go to and appear at his own place of business does not place him at fault in bringing on the difficulty. Cheney v. State, 178 Ala. 44, 59 S. 604; Cheney v. State, 172 Ala. 368, 55 S. 801. (2) Where, in a struggle ensuing from the exercise by accused of his right to protect his custody of his wife and child against deceased who is interfering therewith, the life of accused is in danger or his person is in danger of serious bodily injury from an attack made or about to be made on him by deceased, he has a right to slay deceased. Cole v. State, 48 Tex. Cr. 439, 88 SW 341, 45 Tex. Cr. 225, 75 SW 527. (3) The father and brother of a girl under legal age are engaged in a lawful act when they attempt to prevent her elopement and marriage without the consent of her parents and cannot be deemed to be bringing on a difficulty so as to deprive them of the right of self-

cases where a serious injury is threatened to a wife or husband, child or servant.⁹⁹ And in a few states, where statutes enumerating the relatives in defense of whom a homicide is justifiable do not expressly include brothers and sisters, it is held that they cannot be included by construction.¹ But in other jurisdictions similar statutes are construed not to provide an exclusive enumeration but rather to ingraft the common-law rule into the statutes of the state, and it is held that the statutes, with the common-law rule so incorporated, undoubtedly apply to the defense of a brother as well as to the defense of a wife or other relative specifically named in the statutes.²

[§ 261] 3. **Against Sexual Offenses.** Under the rule that the husband has the same right to defend his wife against a wrong committed in his presence, as the wife would have to defend herself,³ where a husband discovers another in the act of ravishing or attempting to ravish his wife, and the taking of the life of such person reasonably appears to be necessary to protect the wife from the assault, the husband is justified in taking life as fully as the wife would have been.⁴ However, accused is not wholly excused or exempted from criminal liability where the means employed to repel the attack on the wife's honor went beyond those reasonably necessary to obtain the object in view,⁵ as where deceased was unarmed and defenseless and the circumstances did not require that accused, after striking the first blow, should continue the attack.⁶ A father, who acts in good faith and on reasonable appearances of imminent danger, has a right to defend his daughter against an assault with intent to rape,⁷ regardless of what her previous reputation may be.⁸ He has the right to act immediately and with the most effective means at his command,⁹ and the law will hold him guiltless, even though it may subsequently turn out that he could have saved her by pursuing some course other than the instant killing of her assailant.¹⁰ However, for a homicide to be justifiable as in defense of the honor and chastity of the wife or daughter, it must be to prevent an impending or progressing wrong,¹¹ and not for a past offense¹²

or anticipated attempt.¹³ It is held that a husband is not justified in killing another to prevent the seduction or debauching of his wife by artifice or fraud.¹⁴

Adultery. Unless so provided by statute, the husband is not entirely excused or justified in taking the life of another whom he discovers in the act of adultery with the wife.¹⁵ This is an act consented to by her and as she would have no right to take the life of her paramour because of the act committed, her husband, acting in her defense, has no greater right.¹⁶ Under the statutes of some states, a husband has as much right to protect his wife from adultery as from other felonies, and, if necessary to prevent its perpetration, he is justified in taking life,¹⁷ provided he has not forfeited the right by his previous conduct.¹⁸ Under some statutes of this nature, after the act of adultery has been committed by the wife, the husband is not justified in killing her paramour. The killing must be to prevent new acts of adultery with the wife;¹⁹ the danger must be present and impending,²⁰ urgent and pressing,²¹ and the killing must be necessary, or apparently necessary, to prevent the act of adultery.²² But some statutes provide that homicide is justifiable when committed by the husband upon the person of anyone taken in the act of adultery with the wife, provided the killing takes place before the parties to the act of adultery have separated.²³ "Adultery," as used in such a statute, means adultery as known in common parlance, whether consisting of one or more acts, and not statutory adultery consisting of a living together or habitual carnal intercourse.²⁴ Also the expression "before the parties to the act of adultery have separated" does not require that the parties be still physically united in the act of copulation, but contemplates only that the parties be still together in company with each other, after the act, when the homicide is committed.²⁵ Accused is entitled to act on appearances; where the circumstances are such as to cause him reasonably to believe from his standpoint, when he arrives on the scene, that his wife and deceased have just committed adultery, or are about to commit it, he is

164 P 926. (2) Where the person defended is not in the presence or company of the slayer within the meaning of such a statute, the homicide is not justifiable. *State v. Smith*, 115 Wash. 405, 197 P 770.

Prevention of felonies generally see supra § 192.

99. *Com. v. Russogulo*, 263 Pa. 93, 106 A 180, 186.

1. *Mitchell v. State*, 43 Fla. 188, 30 S 803; *Richard v. State*, 42 Fla. 528, 29 S 413.

2. *Warnack v. State*, 3 Ga. A. 590, 60 SE 288; *State v. Mounkes*, 88 Kan. 193, 198, 127 P 637.

3. *State v. Thomas*, 172 Iowa 485, 154 NW 768.

4. *State v. Thomas*, supra; *State v. Thomas*, 169 Iowa 591, 151 NW 842; *State v. Neville*, 51 N. C. 423.

5. *U. S. v. Ocampo*, 6 Philippine 449.

6. *U. S. v. Ocampo*, supra.

7. *Litchfield v. State*, 8 Okl. Cr. 164, 126 P 707, 45 LRANS 153.

8. *Litchfield v. State*, supra.

9. *Litchfield v. State*, supra.

10. *Litchfield v. State*, supra.

11. *Gossett v. State*, 123 Ga. 431, 51 SE 394; *Brown v. State*, 10 Ga. A. 50, 72 SE 537; *Miller v. State*, 9 Ga. A. 599, 71 SE 1021; *Nutt v. State*, 8 Okl. Cr. 266, 128 P 165.

12. *Nutt v. State*, supra.

Past wrongs to female relative as justification generally see supra §

188.

13. *Nutt v. State*, 8 Okl. Cr. 266, 128 P 165.

14. *State v. Young*, 52 Or. 227, 96 P 1067, 132 AMSR 689, 18 LRANS 688.

15. *Hooks v. State*, 99 Ala. 166, 168, 13 S 767; *State v. Thomas*, 169 Iowa 591, 151 NW 842.

"There is no law, unless made so by statute, which wholly excuses the husband from liability for taking the life of the wife or her paramour, although he slay them or either while in the act of adultery." *Hooks v. State*, supra.

16. *State v. Thomas*, 172 Iowa 485, 154 NW 768; *State v. Thomas*, supra.

"The distinction between a case where the husband kills a person ravishing his wife and committing adultery is that the former offense is perpetrated by force, against which he may resort to force in protecting his wife the same as she might have done, while the latter is by her consent." *State v. Thomas*, supra.

17. *Patterson v. State*, 134 Ga. 264, 67 SE 816; *Wilkerson v. State*, 91 Ga. 729, 17 SE 990, 44 AMSR 63; *Mays v. State*, 88 Ga. 399, 14 SE 560; *Richardson v. State*, 70 Ga. 325.

[a] In Georgia the statute applied is one which, following other statutes defining justifiable homicide, declares that "all other instances

which stand upon the same footing of reason and justice as those enumerated, shall be justifiable homicide." But for this statute, the common-law rule that the killing of an adulterer by the husband is not completely justifiable would be in force in the state. *Wilkerson v. State*, 91 Ga. 729, 17 SE 990, 44 AMSR 63.

18. *Wilkerson v. State*, supra.

19. *Curtis v. State*, (Ga. A.) 110 SE 907.

20. *Farmer v. State*, 91 Ga. 720, 18 SE 987; *Jackson v. State*, 91 Ga. 271, 18 SE 298, 44 AMSR 22.

21. *Curtis v. State*, (Ga.) 110 SE 907.

22. *Farmer v. State*, supra; *Jackson v. State*, supra.

23. *Cook v. State*, 78 Tex. Cr. 116, 180 SW 254; *Williams v. State*, 73 Tex. Cr. 480, 165 SW 583; *Shed v. State*, 68 Tex. Cr. 373, 153 SW 125 (reciting but not applying the statute); *Morrison v. State*, 39 Tex. Cr. 519, 47 SW 369; *Massie v. State*, 30 Tex. A. 64, 16 SW 770; *Price v. State*, 18 Tex. A. 474, 51 AmR 322.

24. *Price v. State*, supra.

25. *Price v. State*, supra.

[a] **Where the wife is not present** (1) at the time of the killing, the statute is not applicable. *Duhig v. State*, 78 Tex. Cr. 125, 128, 130 SW 252. (2) "It is only when one catches another in the act of adultery with his wife that he is

authorized to kill.²⁶ In applying the statute the place where the homicide occurs is immaterial; the statute makes no exception in favor of one place or another but is broad enough to cover every place.²⁷

[§ 262] E. Defense of Habitation²⁸—1. In General. It is a general rule, expressly affirmed by statute in some jurisdictions, that a person is justified in taking life in defense of his habitation where it is actually or apparently necessary to do so in order to repel another person who attempts to enter in a forcible or violent manner for the apparent purpose of committing a felony therein upon either person or property or of inflicting great bodily harm or of assaulting or offering personal violence to a person dwelling or being therein.²⁹ The right to take life in a proper case in defense of habitation may be exercised not only by the owner or occupant of the house³⁰ but also by his servants³¹ and guests.³² And the persons who may be protected include guests.³³ The principle that the taking of life in defense of habitation is excusable or justifiable is not applicable to a common brawl for which accused is mainly responsible,³⁴ or to a case where deceased is on a public highway in front of accused's house and is not attempting to enter or to make any forcible attack or invasion.³⁵ The homicide is not justifiable where, although deceased is attempting at the time unlawfully to enter accused's dwelling house, the killing is done with malice and ill will and not

for self-protection or protection of the habitation.³⁶

Against person lawfully in house. The rights of a householder against a violent intruder have no relevancy, and the ordinary rules as to self-defense are alone applicable, where deceased is not even a trespasser but is lawfully in the house, as where he and accused are members of the same family and household,³⁷ or where he is armed with a writ giving him the legal right to take possession of the dwelling for the purpose of ejecting accused and his household goods from it.³⁸

[§ 263] 2. What Constitutes Habitation. The habitation which may be defended, even to the extent of taking life, includes any place where a person lives and which is his only home and place of abode, even though it is a mere tent³⁹ or a box stall.⁴⁰ It includes outbuildings within the curtilage.⁴¹ It does not extend beyond the curtilage or the limits of the dwelling and the customary outbuildings.⁴² And on the theory that a man is entitled to defend his house, not as property, but as his castle affording protection to his person, it is held that the rule does not apply to the lot of ground on which the house stands.⁴³ In a restricted sense, a barn⁴⁴ or an automobile⁴⁵ may be regarded for the time being as a man's "castle," which he is entitled to defend for the protection of himself and others therein. It is held that a person has a right to take life to prevent the violent entry of his place of business for the apparent purpose of inflicting death or great bodily injury on an

justified in slaying his adversary." *Dobig v. State*, supra.
25. *Gregory v. State*, 50 Tex. Cr. 24 SW 1041.
26. **Parties in embrace.**—Where the husband discovers the wife and another in the act of embracing each other and under the circumstances believes that they are then in the act of intercourse, or preparing to engage therein, he has a right to kill. *Cook v. State*, 73 Tex. Cr. 116, 25 SW 254.
27. *Giles v. State*, 43 Tex. Cr. 561, 27 SW 411.
28. **Retreat when attacked in house** see supra § 246.
29. *Ala.*—*Carroll v. State*, 23 Ala. 58 Amd 282.
30. *Ark.*—*Hall v. State*, 113 Ark. 454, 201 SW 1122; *Carpenter v. State*, 62 Ark. 286, 36 SW 900; *King v. State*, 57 Ark. 604, 19 SW 110; *Brown v. State*, 55 Ark. 593, 18 SW 1051; *Harris v. State*, 34 Ark. 469.
31. *Cal.*—*Peo. v. Walsh*, 43 Cal. 447.
32. *Colo.*—*Bailey v. Peo.*, 54 Colo. 337, 120 P. 832, 45 LRANS 145, AnnCas 1142.
33. *Del.*—*State v. Mills*, 24 Del. 497, 1 A 341; *State v. Becker*, 14 Del. 411, 1 A 178; *State v. Horskin*, Houst. Cr. 116.
34. *Ga.*—*McCray v. State*, 134 Ga. 416, 35 SE 62, 20 AnnCas 101; *Smith v. State*, 106 Ga. 673, 32 SE 851, 71 AmSR 286; *Price v. State*, 72 Ga. 441; *Thompson v. State*, 55 Ga. 47; *Hendins v. State*, 2 Ga. 173.
35. *Ill.*—*Peo. v. Osborne*, 278 Ill. 104, 201 NE 890; *Hayner v. Peo.*, 213 Ill. 72, 72 NE 792; *Moran v. Peo.*, 163 Ill. 372, 45 NE 230; *Davidson v. Peo.*, 133 Ill. 221; *Brown v. Peo.*, 39 Ill. 407.
36. *Iowa.*—*State v. Thompson*, 9 Iowa 74 Amd 342.
37. *Kan.*—*State v. Countryman*, 57 Kan. 815, 48 P 137.
38. *Ky.*—*Steele v. Com.*, 192 Ky. 223, 202 SW 646; *Sparks v. Com.*, 89 Ky. 444, 20 SW 167; *Wright v. Com.*, 85 Ky. 123, 2 SW 904, 8 KyL 718.
39. *Mo.*—*State v. Taylor*, 143 Mo. 150, 44 SW 785.
40. *Mont.*—*State v. Smith*, 12 Mont. 20 P 679.
41. *Nebr.*—*Young v. State*, 74 Nebr. 244, 104 NW 867, 2 LRANS 66; *Thompson v. State*, 61 Nebr. 210, 85 NW 62, 87 AmSR 453. See *Reed v. State*, 75 Nebr. 509, 106 NW 649

(self-defense extends to defense of the domicile).
N. C.—*State v. Gray*, 162 N. C. 608, 77 SE 833, 45 LRANS 71.
Oh.—*State v. Peacock*, 40 Oh. St. 333.
Okl.—*Armstrong v. State*, 11 Okl. Cr. 159, 143 P 370; *Collegenia v. State*, 9 Okl. Cr. 425, 132 P 375.
Pa.—*In re Charge to Grand Jury*, 2 PaLJR 275, 4 PaLJ 29.
Tex.—*Allen v. State*, (Cr.) 66 SW 671.
Vt.—*State v. Patterson*, 45 Vt. 308, 12 AmR 200.
Va.—*Parrish v. Com.*, 81 Va. 1.
W. Va.—*State v. Manus*, 48 W. Va. 480, 37 SE 613.
Eng.—*Semayne's Case*, 5 Coke 91a, 77 Reprint 194; *Cooper's Case*, Cro. Car. 544, 79 Reprint 1069; *Meade's Case*, 1 Lew. C. C. 184; *Poster C. C. p 273*; 1 *Hawkins P. C. p 71*.
"Where one is assailed in his home, or the home is attacked, he may use such means as are necessary to repel the assailant from the house, or prevent his forcible entry or material injury to his home, even to the taking of life." *Young v. State*, 74 Nebr. 346, 352, 104 NW 867, 2 LRANS 66.
"That a man in his own habitation may resist with force an unlawful, violent entry by one whose purpose is to assault or offer violence to him, even to the extent of taking the aggressor's life, is undoubtedly the law." *Peo. v. Osborne*, 278 Ill. 104, 111, 115 NE 890.
"A man who is without fault may repel force with force in defense of his person, habitation, or property against any one or many who manifestly intend and endeavor with violence to commit a felony thereon or therein." *Collegenia v. State*, 9 Okl. Cr. 425, 436, 132 P 375.
[a] **Equivalent to assault upon person.**—An assault upon, or attempt to enter, a man's house is equivalent to an assault upon the person, and confers on the householder the right to use such force as is necessary to repel the assault, even by means fatal to the assailant, if rendered necessary by the exigency of the assault. *Hall v. State*, 113 Ark. 454, 763 SW 1122; *Brown v. State*, 55 Ark. 593, 18 SW 1051; *State v. Perkins*, 88 Conn. 360, 91 A 265, LRA1915A 73; *State v. Patterson*,

45 Vt. 308, 12 AmR 200.
[b] **Assault with deadly weapon.**—"When there is an armed invasion on the premises or habitation of another, and an assault is there made with a deadly weapon, the person assaulted may well assume that the other intends murder whether he does in fact or not, and if he kills his assailant he is justifiable." *Collegenia v. State*, 9 Okl. Cr. 425, 434, 132 P 375.
[c] **One who attempts to break and enter with the intention of extorting money** by charging the occupant with the commission of an infamous offense, and threatening to expose him to public reprobation and contempt, may be lawfully killed. *Thompson v. State*, 61 Nebr. 210, 85 NW 62, 87 AmSR 453.
30. *Ogles v. Com.*, 11 SW 816, 11 KyL 289.
31. *Ogles v. Com.*, supra.
32. *Crawford v. State*, 112 Ala. 1, 21 S 214; *King v. State*, 55 Ark. 604, 19 SW 110; *Brown v. State*, 55 Ark. 593, 18 SW 1051; *Ogles v. Com.*, 11 SW 816, 11 KyL 289; *Cooper's Case*, Cro. Car. 544, 79 Reprint 1069.
33. *State v. Borwick*, (Iowa) 187 NW 460.
34. *State v. Robertson*, 166 N. C. 356, 31 SE 689.
35. *Ward v. State*, 25 Ga. A. 296, 103 SE 726.
36. *Hall v. State*, 113 Ark. 454, 163 SW 1122; *State v. Perkins*, 88 Conn. 360, 91 A 265, LRA1915A 73.
37. *Com. v. Johnson*, 213 Pa. 432, 62 A 1064 (where the house was the property of accused's wife who was also deceased's mother and both were members of her family).
38. *Williams v. State*, 147 Ala. 10, 41 S 992.
39. *State v. Holbrook*, 98 Or. 43, 188 P 947, 192 P 640, 193 P 434.
40. *Young v. State*, 74 Nebr. 346, 104 NW 867, 2 LRANS 66.
41. *Peo. v. Coughlin*, 67 Mich. 466, 35 NW 72; *Pond v. Peo.*, 8 Mich. 150.
42. *State v. Bartmess*, 33 Or. 110, 54 P 167.
43. *Com. v. McWilliams*, 21 Pa. Dist. 1131.
44. *State v. Baker*, (Iowa) 135 NW 1097.
45. *State v. Borwick*, (Iowa) 187 NW 460.