

SELECTIONS.

the law of nature in Chancery." Some strange results followed when this unlucky law of nature found itself "in Chancery"; but the Star Chamber had its advantages in days when powerful and lawless men could not be reached by ordinary law. It was the necessary machinery for their coercion. When, however, advances were made in civilization, the Star Chamber became unalloyed tyranny, and is now universally stigmatized in history. The "criminal equity" which it used to administer does not, however, seem to have died out altogether. Chief Baron Pollock used to say that "criminal equity" died out with the Star Chamber, but he did not see the recent development of the Court for the Consideration of Crown Cases Reserved. In *Regina v. Middleton*, with the dissent of Barons Martin and Bramwell, the present Master of the Rolls and Baron Cleasby, the doctrine that larceny must be *invito domino* seems to have been struck out of the law; in *Regina v. Ashwell* a similar fate seems to have attended the doctrine that there must be a felonious taking, not, as in the other case, by a majority of the judges, but in virtue of the phrase, *Semper presumitur pro negante*. It is a characteristic example of this Court that this rule is not construed in its substantial sense—namely, that the crime was negated—but in the artificial sense that the motion to quash the conviction was rejected.—*The Law Journal* (London, Eng.).

SELF-DEFENCE.

In a recent case in Iowa * the Supreme Court takes what is believed by some gentlemen of the bar in that State to be a new departure on the law of self-defence, and the duty of a person assailed to "retreat to the wall," before taking human life. In that case the prisoner was pursued by the deceased (who was his father), armed with a pitchfork, very angry, and apparently intent upon serious mischief. Without exhausting his remedy of flight, the prisoner turned upon his pursuer and shot him, and he died two days afterwards. The prisoner was convicted of manslaughter, and sentenced to imprisonment

for fifteen years. In the trial Court, the judge charged the jury thus: "You are instructed that it is a general rule of law that, where one is assaulted by another, it is the duty of the person thus assaulted to retire to what is termed in the law a wall or ditch, before he is justified, in repelling such assault, in taking the life of his assailant. But cases frequently arise where an assault is made with a dangerous or deadly weapon, and in so fierce a manner as not to allow the person thus assaulted to retire without manifest danger of his life or great bodily injury; in such cases he is not required to retreat." This instruction, the Supreme Court held, stated the law on the subject correctly.

For the defence it was argued that the instruction was erroneous in holding that the assailed is bound to retreat, and is only exempt from the necessity of doing so, where it would be manifestly dangerous to attempt a retreat. It was insisted that the assailed is only bound to retreat where the assault is not felonious. Where it is felonious the assailed may well stand his ground and kill his assailant, if he has reasonable grounds as a prudent man for believing that if he does not, his assailant will kill him. And this under these circumstances, he may well do, irrespective of his means of escape by flight.

This line of defence the Supreme Court held was untenable, and, as we learn from a correspondent, the opinion of the profession in Iowa is divided on the subject.

If the time-honoured doctrine which requires a retreat to the wall is limited to non-felonious assaults, as seems to be argued against the reasoning of the Court, there are comparatively very few cases in which retreat can be required at all. The question can seldom arise except in cases which our statutes denominate "assaults to kill." In an ordinary affray or "fisticuff" the assault is not felonious, and in those cases the danger to life or of great bodily harm does not usually exist, and these are as essential to a successful defence as the retreat to the wall. Mr. Bishop says: "The cases in which this doctrine of retreating to the wall is commonly invoked are those of mutual combat. Both parties being in the wrong, neither can right himself except by retreating to the wall. Where one, contrary to his original expectation, finds himself so hotly pressed as to render the killing of

* *State v. Donnelly*, 27 N. W. Rep. 369.