

That the above quotations embody the well-settled rules of the common law on this subject is made manifest by the treatment of them by the Fourth (Imperial) Commission on the Criminal Law, appointed in 1845.

In their Second Report the Commissioners said as follows:—

“Owing to the important changes which have taken place in the law, whereby felonies have been made to include a variety of offences of a much less aggravated description than those to which the term was originally applied, and the difference between felonies and misdemeanours having become, except as regards the law of procedure, merely nominal, the rules concerning justification in cases of homicide have in several instances, it is submitted, become unreasonable and inexpedient. Hence it has appeared expedient to modify the rules whereby (1) it is justifiable to kill a person who does not make resistance, but *flies*, after having committed a felony or having given a dangerous wound. (1 Hale 489, 490; 1 Hawk, P.C., c. 28, s. 11; Fost. 271; 4 Black Comm. 179); . . . With respect to the first-mentioned rule, we have made an important limitation of the law, by confining the justification to prevent escape, where there is no resistance, to cases where the party flying lies under a capital charge. The great alterations which have occurred since the rules on this subject were originally established in the definitions and punishment of offences, and the shadowy distinctions between many felonies and misdemeanours seem to require that the justification for taking away life in cases of flight should be confined in the manner provided for in the text. Besides which, all felonies in the cases in which the rule was allowed to operate, were originally punishable with death” (p. 31).

This report was presented to Parliament in the year 1846. A draft of a bill embodying the recommendations of this Fourth Commission is contained in their Fourth Report. This bill was introduced into the House of Lords in 1848 by Lord Brougham, but was not further proceeded with.