

is justifiable. The injured person may repel force by force against any who endeavor to commit any kind of felony on him or his; here the rule is, I have a right to stand on my own defense, if you intend to commit felony. If any of the persons made an attack on these soldiers, with an intention to rob them, if it was but to take their hats feloniously, they had a right to kill them on the spot, and had no business to retreat; if a robber meets me in the street, and commands me to surrender my purse, I have a right to kill him without asking questions; if a person commits a bare assault on me, this will not justify killing; but if he assaults me in such a manner as to discover an intention to kill me, I have a right to destroy him, that I may put it out of his power to kill me. In the case you will have to consider, I do not know that there was any attempt to steal from these persons; however, there were some persons concerned, who would probably enough have stolen, if there had been anything to steal; and many were there who had no such disposition; but this is not the point we aim at, the question is, are you satisfied that the people made the attack in order to kill the soldiers? If you are satisfied that the people, whoever they were, made that assault, with a design to kill or maim the soldiers, this was such an assault, as will justify the soldiers killing in their own defense.

Further, it seems to me we may make another question, whether you are satisfied that their real intention was to kill or maim or not. If any reasonable man, in the situation of one of these soldiers, would have had reason to believe in the time of it, that the people came with an intention to kill him, whether you have this satisfaction now, or not, in your own minds, they were justifiable, or at least excusable, in firing. You and I may be suspicious, that the people who made this assault on the soldiers, did it to put them to flight, on purpose that they might go exulting about the town afterwards in triumph; but this will not do, you must place yourselves in the situation of Wemms or Killroy, consider yourselves as knowing that the prejudices of the world about you