

And yet all appeals to be made of things done out of the Realm, shall be tried before the Constable and Marshal of *England*, by the Statute 1 *H. 4. cap. 14.* So that if any of the Kings Subjects shall be killed by another of the Kings Subjects in *Scotland*, or in any Forreign Realm, the Wife or Heir of him which is so slain, may have an appeal thereof in *England*, before the Constable and Marshal, &c. *Stamf. 65. b. Vide Co. L. 74.*

Also to kill a Man upon the Sea, although it be not tryable by the Common Law, yet it is Felony, and is inquirable and tryable in the Admirall Court; for those of the Admiralty have Jurisdiction, where both the stroke and dying is upon the Sea; otherwise not. And therefore in 25 *El.* it was adjudged in one *Lacys* case, That where the said *Lacy* had stricken *Peacock*, and given him a mortal wound upon the Sea, whereof *Peacock* dyed at *Scarborough* (in *Torkshire*,) the said *Lacy* was discharged thereof, for that those of the County of *Tork* could not enquire of the death without enquiry of the Stroke; and the Stroke they could not enquire, for that it was not given within any part of the County. See *Co. 2. 93. & 5. 106, 107. & Stat. 15 R. 2. cap. 3. & 2 H. 5. c. 6.* But yet by the Statutes made *Anno 27 H. 8. c. 4. & 28 H. 8. cap. 5.* all offences of Pyracy, Robbery, Murther or other Felony done or committed upon the Sea, (or in any other Haven, River or Creek, where the Admirall pretends to have Jurisdiction) shall be enquired of, heard, tryed and determined in such Shires and places within the Realm, and before such persons as shall be limited and appointed by the Kings Commission, and after the common course of the Laws of the Land, used for Felonies committed within the Realm; and such as shall be so convict of any such offence, shall have and suffer such paines of Death, and forfeiture of Lands and Goods, as if they were convict of Murther or Felony done upon the Land.

But whether he that is slain, be an Alien, or a Denizen, an English man or Stranger, it maketh no difference. (if he live within this Realm under the Kings protection.) Lamb. 231

To kill a Man that is attainted (by Verdict, or by Outlawry, or otherwise) of any Murther, Felony or Treason, is Felony: for none may kill or put to death any of these, but the Officer of Justice, and by lawful warrant. See *Doct. & Stud. fol. 133. Co. L. 128. b.* Co. 7. 13; 14. Cromp. 24

Also to kill a Man attainted upon a *Premunire*, is Felony at this day. *Co. 7. 14.* See the Stat. 5 *Eliz. cap. 1. & Co. 7. 14. Co. L. 130.*

Also to kill a Man that hath abjured the Realm, is Felony. See *Co. 7. 9. b.* and the *Doct. & Stud. fol. 133.*

For note, That the Kings Protection belongeth by the Law of Nature to all these, and the King may protect and pardon them all.

§. 3.
Kinds of
Homicide.

Homicide is threefold: } *Voluntate; et scilicet*, of a malicious purpose. } *est duplex*: } Man-slaughter, or Chance-medly, of a sudden. } *Casus*, or Misadventure: this also is considerable after two sorts, } Lawful, } or } Unlawful. } *scilicet* whether it happen in doing a thing } Commanded, *sc.* in execution of Justice. } Tolerated } For advancement of Justice. } *Necessitate*; this is sometimes } Prohibited, } *Se defendendo.* } See *post. tit. Homicide.*

“ *Bracton* divides Homicide into two sorts, } *Lingua, vel Facta.* Lingua