

If *A.* do strike *B.* to the ground, and then draweth his Knife to kill *B.* and *B.* lying upon the ground draweth his Knife to defend himself, and *A.* is so hasty to kill *B.* that he falleth upon *B.* his Knife; and so *A.* is slain; here *A.* in a manner is *Felo de se*, and yet shall not *A.* forfeit his Goods in this case, *Br. Co. L. 12.* See 44 *Aff. p. 17.* *Br. Cor. 12 & 14.* that *A.* was adjudged not to be *Felo de se*, in this case.

44 E. 3. 44
Fit. Cor.
64.

‘ If *A.* of malice premeditated dischargeth a Pistol at *B.* and misseth him, and throws down his Pistol and flyeth, and *B.* pursueth him to kill him, whereupon *A.* turning, falleth down, his Dagger drawn, and *B.* through haste falleth upon the Dagger, here *B.* is *Felo de se*, and *A.* shall go quit,

‘ 44 *E. 3.* Sir *Fr. Bacon 4, 5.*

‘ If a Caliver be discharged with a Murtherous intent at *J. S.* and the piece breaks, and strikes into the eye of him that dischargeth it, and killeth him, he is *Felo de se*; and yet his intention was not to hurt himself: for *Felonia de se*, and Murther, are *Crimina paria gradus.* See *ibid. p. 65.*

‘ And in such case he shall forfeit his Lands, *quia convincitur, Brañ. lib. 13. cap. 31.*

§. 3. If one that wanteth discretion, killeth himself, (as an Infant, or a Man *Stamf. 191* who may be *non compos mentis*) he shall not forfeit his Goods, &c. *Brañ. Ibid.*
Felo de se

If a Lunatick Person killeth himself, he shall forfeit his Goods, (*Fitz. Coron. 324.*) but this must be understood when he killeth himself out of his Lunacy: otherwise it is if he killeth himself during his Lunacy, for then he shall neither forfeit his Goods, nor be counted *Felo de se.*

If one being of *Non sana memoria*, or a Lunatick, giveth himself a mortal wound, and after he becometh of sound Memory, and then dyeth of the same Wound, in this case, although he dyeth by reason of his own proper stroke, yet for that the original cause was committed when he was *de non sana memoria*, he shall not be accounted *Felo de se*, neither shall he forfeit any thing, for that the death hath relation to the original Act, the which was the stroke or wound given when he was *de non sana memoria*, *Co. 1. 99. b. & 4. 42. a. Fitz. Coron. 244. Pl. 260.* *Co. 4. 129.*

§. 1. The Inquiry of such a Felony belongeth to the Coroner: And yet if *Felo de se* be cast into the Sea, or secretly buried, that the Coroner cannot have the sight of his Body, and so cannot inquire thereof; then the Justices of Peace, or any other having authority to inquire of Felonies, may inquire thereof (for that it is Felony:) and a presentment thereof found before them, intituleth the King to his Goods. *Co. 5. 110.*
who shall inquire of it.

Murder. C H A P. CXLV. V. 93.

§. 1. **O**F old time every killing of one Man by another, was called Murther, (of the effect) because death ensued of it. Afterwards Murther was restrained to a secret killing only; and therefore *Brañon* and *Britton* in their definition of Murther, calleth it *Occulta occiso nullo presente præter interfectorem & suos coadjutores, &c.* But since Murther hath been, and is taken in a middle degree, neither so largely as it first was, nor so narrowly as Master *Brañon* and *Britton* speaketh of it. For Murther is now construed to be when one Man upon malice premeditated, (*sc.* forethought) or precedent and with his Will, doth kill another Feloniously, *viz.* with a premeditate and malicious Mind, whether it be openly or privily done, this is Felony of Death, without any benefit of Clergy, 23 *H. 8. cap. 1. & 1 Ed. 6. cap.*

Exod. 21.
13.
Numb. 35.
20.
Deut. 19.
11.

Stamf. 181
Plov. 261.