

6. cap. 12. See Exod. 21. 14. he shall be taken from the Altar and put to death.

This malice prepened or precedent, may be either apparent (as where there was a precedent falling out, or where there is a lying in wait, or a time and a place appointed, &c.) or it may be less apparent or manifest, and yet shall be implied, presumed and taken to be out of malice precedent, by the manner and circumstances thereof. §. 2. Malice.

Co. 9. 67. As where one killeth another without any provocation, the Law implieth, and adjudgeth it to have proceeded of malice prepened: therefore if one suddainly, and without any shew of quarrel or offence offered, shall draw his Weapon and therewith kill another.

Or if one shall be reading of some Book, or otherwise busied, so as he saw not the party that shall stab or strike him (and he dyeth thereof;) or shall be going over a Stile, &c. and another shall kill him; such Offenders shall suffer death, as in case of wilful Murther. Cro. 23. 37.

And accordingly hath the Statute 1 Jac. well provided, That if one shall stab, strike or thrust another, that hath not then a weapon drawn, or hath not then first striken the other; and if the party so stabbed, striken or thrust, &c. shall dye thereof within six months after, although it cannot be proved that the same was done of malice forethought; yet the Offender being thereof lawfully convicted, shall suffer death as a wilful Murderer without benefit of Clergy. Jac. 1. 28.

To kill the Sheriff or any of his Officers, in their execution of the Kings Proecess; or in doing their Office; is Murther in him that killeth the Officer. Co. 4. 40. & 9. 66. 68. §. 3. Officers.

But if he be not an Officer known, he must shew his Warrant, before he arrest the party, or upon the arrest (if the other shall demand to see it) or else it seemeth the arrest is tortious; and where the arrest is tortious (be it by an Officer known or by another) there the killing of him that maketh such an unlawful arrest, is no Murther, but Man-slaughter only, as it seemeth. Again, where an Officer hath the Kings Writ or other lawful Warrant; though it be erroneous, yet in the executing thereof, if he be slain, this is Murther, Co. 9. 68. Co. 9. 69.

For the Officer is not to dispute of the validity of his Warrant, or the authority of the Court (or of the Justice of Peace) that sent the Warrant; but his Office is to execute the Writ or Warrant.

To kill any Magistrate or Minister of Justice, in the execution of their Office, or in keeping the Peace (according to the duty of their Office) is Murther in such Offenders, for their contempt and disobedience to the King and the Law; and the Law implyeth it to be of malice prepened. And therefore if the Sheriff, Justice of Peace, High Constable, Petty Constable, Watchmen, or any other Minister of the King, or any that come in their aid, be killed in doing their Office, this is Murther. Co. 4. 40. & 9. 68.

If the Sheriff or Justice of Peace come to suppress Riotors, and one of the Sheriff or Justices Company is slain by one of the Riotors; this is Murther in all the Riotors that be there present. 22 Eliz. Cromp. 25.

A Constable, with others to aid him, do come to part an affray, if the Constable, or any of his Company shall be slain in doing this his Office, it is Murther in him that killed him, although the affray were on the suddain, and though it were in the night: for when the Constable commands them in the Kings name to keep the Peace, although they cannot know him to be a Constable, yet at their peril they ought to obey him upon such Commandment. Co. 4. 42. Co. 9. 68.

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