

And in these cases, the killing of such an Officer, or any of their Company, is in Law intended to be by malice prepensed, *sc.* that the Murtherer had a malicious resolution in him, to oppose himself against the Law, the Officers thereof, and the Justices of the Realm. Co. 9. 67.
68.

Also a Thief that offereth to rob a true man, killing the true man in resisting him, it is Murther of malice prepensed, *Plom.* 474. *Co.* 9. 67. Pl. 174.

§ 4. A man carried his Father (being sick, and against his Will) in a frosty and cold time, from one Town to another, and the Father dyed thereof; this was adjudged Murther in the Son. 2 E. 3. 18.

An Harlot delivered of a Child, hid it in an Orchard (it being alive) and covered it with leaves, and a Kite struck at it, and the Child dyed thereof, and the Mother was arraigned and executed for Murther. 2 Eliz.
Cromp. 24.

A man hath a Beast that is accustomed to do hurt, and the Owner knowing thereof, doth not tye him or otherwise keep him fast shut up, but suffereth him to go at liberty, and after the Beast killeth a man; this is Felony in the Owner of the Beast: for by such sufferance the Owner seemeth to have a Will to kill, *Exod.* 21. 29. Fit. Co.
311.
Stamf. 17.
Exod. 21.
29.

So if a man hath an Horse of that property, that he will strike such as come near him, and his Master knowing this, rideth upon the same Horse amongst a multitude of People, &c. and the Horse killeth a man; this is Felony in the Master, *Let. M. Cook.*

And in these four last cases, *voluntas reputabitur pro facto*, death ensuing thereupon: For it may plainly appear, that they had a will and meaning of that harm which followed, which Will in them, doth amount to malice, and so makes their offences to be Murther, and in such cases where death ensueth, *Nihil interest, utrum quis occidat, an causam mortis præbeat.*

The same Law seems of an Officer, who being appointed and authorized to whip, or with an hot Iron to burn or brand, or otherwise to punish an Offender, shall do it with such rigour, or in such extream manner, as that the Offender by reason and means thereof dyeth.

If a man perswades another to kill himself, and be present when he doth it, he is a Murtherer, *Ba.* 65.

§ 5.
Four ways
committed.

The Book called *Speculum Justiciar.* speaking of *Homicida voluntate*, saith, it may be, either by striking, imprisonment, famine or other pain.

1. By striking or stabbing, &c. as you may see by that already said.
2. By imprisonment; as if a man by imprisonment shall detain the Body of another (under colour of Law or right) unto death, or so as he dyeth thereby. See *hic verbo*, *Gaoler.*
3. By Famine; as if a man shall cast, or leave an Infant, or other person which cannot go, in a Desert or such other place, where no person usually resorts, by reason whereof such Infant, or other impotent person dyeth for want of succor, &c.
4. By pain; as if a man by torture (or *Dures*) causeth another to accuse himself mortally, where in truth he did not the thing, but to be rid of the pain (rather desiring death) he confesseth himself guilty of the Felony, when he is not guilty.

If a man dyeth in the hand of a Physician or Chyrurgion authorized to practise, this is no Felony in the Physician or Chyrurgion. And yet if a Physician bearing malice to one who is under his Cure, shall give him a Medicine contrary to his Disease, whereof the Patient dyeth; this is Felony in the Physician, *Let. M. Cooke.* P. Cor.
163.
Stamf. 16.

If a Chyrurgion authorized, do through negligence in his Cure, cause the Party to dye, the Chyrurgion shall not be brought in question of his life;