

life; and yet if he do only hurt the wound, whereby the Cure is cast back, and death ensues not, he is subiect to an Action upon the Case for his misfeasance, Sir *Fr. Ba.* 37.

And if one which is no Physician or Chyrurgion (or which is not allowed to use or practise such faculty) will take a Cure upon him, and his Patient dyeth under his hand; this hath been holden to be Felony: but *quere* of this last case, for it cannot be discerned whether the Patients death cometh by any lawful default, in the party taking such Cure upon him, or by the Patients infirmity; again, there appeareth in them no will to do harm, but rather to do good; and then the Stat. of 54 *H. 8. 8.* leaveth so great a liberty of such practice to unskilful persons, that it will be hard now to make it Felony. But if a Smith, or other person (having skill only in dressing or curing the Diseases of Horses or other Catrel) shall take upon him the cutting or letting Blood, or such like Cure of a Man, who dyeth thereof, this seemeth to be Felony; for the rule is, *Quod quisque norit, in hoc se exerceat.*

34 E. 3. 33. Lamb. 236

34 H. 8. 8. P. Chair. 2.

Cromp. 23

Two playing at Tables, fall out in their Game, and the one killeth the other with a Dagger suddenly; this was holden Murthber, in one *Emeries*, Case before *Bromley*, at the Assizes in *Cheshire*, about 27 *El.* as Master *Crompton* reporteth.

Cromp. 25

The Husband, upon words between him and his Wife, suddenly struck his Wife with a Pestle, whereof she dyed, and it was adjudged Murthber at the Assizes at *Strafford*, before *Walmesley*, 43 *Eliz.*

§. 6. Provocacion.

*Quere* the reason why it should be Murthber in these two last cases, considering there appeareth no precedent malice, and that it was done upon the sudden, and upon provocation.

“The reason seemeth to be, for that in these two cases was no sufficient provocation to take off the imputation of malice; for it was resolved in my Lord *Morleys* Case (as I heard Mr. Justice *Wild* say in the Common Pleas) that words were no sufficient provocation to excuse the malice intended.

“*Bird* challenges *Taverner* to Fight, and appoints a time and place, for that *T.* paid him some Mony he owed him, *T.* paid the Mony duely, and then for the preservation of his Reputation, meets at the place appointed and *B.* kills *T.* and this was adjudged Murthber; for the Law respects not who gave the first occasion, if the other accept and undertake the Quarrel; and such Fights grew from settled determinations and purposes to kill, and all Deaths happening of Fights upon Challenges are Murthber.

§. 7. Challenge.

“*P. 14 Jac. Rolls Rep. part 2. p. 260.*

Lamb. 247

*A.* hath wounded *B.* in Fight, and after they meet suddenly, and fight again, and *B.* killeth *A.* this seemeth Murthber, and malice shall be intended in *B.* upon the former hurt; but now if *A.* had killed *B.* this seemeth but Man-Slaughter, if *A.* for his former malice shall be thought to be appeased by the hurt he first did to *B.*

Two were in Suit, and they meet suddenly, and quarrel about the Suit, and the Defendant killeth the Plaintiff; this seemeth Murthber: *Tamen quere.*

“If *A.* of malice prepared, discharge a Pistol at *B.* and misseth him, and throws down his Pistol and flies, and *B.* pursueth him to kill him, whereupon *A.* turneth, and killeth *B.* with a Dagger: if the Law should consider the last impulsive cause, it should say, that it was in his own defence: But the Law is otherwise, for it is but a pursuance and execution of the first murderous intent; and the first motive will be principally regarded, and not the last impulsion. Otherwise, if there had been a full interruption, Sir *Fr. Bacon* 4.

Also

145.

Co. 9. 67. 68.

Plo. 174.

2 E. 3. 18.

2 Eliz. Cromp. 24

Fit. Co. 311. Stamford. 17. Exod. 21. 29.

P. Cor. 163. Stamford. 16