

Plo. 435.
F. Cor.
314.

Also where a man commandeth another to beat *A.* and he beateth him; so as *A.* dieth thereof; this is Murder in him that gave the Commandment to beat him, for that he commanded him to do an unlawful Act, by reason whereof the killing of a man ensued.

For (as that late Reverend and Learned Judge Sir *John Dodderidge*, pag. 138. sheweth) there is an efficient cause Casual; as if a man intend to do any unlawful act; and in doing thereof, another hurt ensueth, not intended, but by chance, clean beyond all expectation or desire, yet shall he be said the author of that act not intended, (and so hapning by chance) that did intend the first act.

Br. Cor.

172.

F. Cor.

350.

Co. 11. 5.

3. Note also that if divers persons come in one Company (and as Confederates in the fact, *Stauf. 40.*) to do any unlawful thing, as to kill, rob, or beat a man, or to commit any Riot or Affray, or to do any other Trespass, and one of them in doing thereof, killeth a man; this shall be adjudged Murder in them all that are present of that Party abetting him, and consenting to the Act or ready to aid him, although they did but look on, &c. See *Stauf. 40. Fitz. Indictment 22 Plo. 98.*

§. 10.
Principal.

Nay, if they be not present, yet if they be in the same house, or upon the same ground, it is Murder in them all. See the Lord *Dacres Case*, *Cromp. 25.*

Mr. Bracton, fol. 121. saith further, *Si plures rixati fuerint inter se in aliqua consuetudine & aliquis sit interfecus, nec appareat ex quo, nec ex cuius vulnere, omnes dici possunt homicida, &c. quare;* if their meeting were upon a lawful occasion, and if they suddenly fall out, and no former malice may appear.

Plo. 100.

See here.

4. Note also, that all that are present, and aiding, abetting or comforting to another to do Murder, are principal Murderers, although they shall give never a stroke. See more, 4 *H. 7. 18. 13 H. 7. 16. Fitz. Coron. 309. Co. 9. 67. 112. & 11. 5.*

As if *A.* and *B.* fall out, and appoint the Field, and they meet accordingly, each of them bringing Company with them, *A.* killeth *B.* this is Murder in all those that came with *A.* as his second, or abetting, comforting, or ready to assist or aid him, for that the presence of these other that came with *A.* is a terror to *B.* and an encouragement to *A.* *Vide ibid. & Plo. 98.*

And yet if *B.* cometh in the Company of *C.* who of his malice premeditated, doth go to kill *D.* and then *B.* seeth them fighting together, he taketh part with *C.* suddenly (not having any former malice to *D.*) and striketh at *D.* with the other, and *D.* is thus slain amongst them; this is but Manslaughter in *B.* for that he had no malice precedent, *Plo. 100.* See the Case of the Master and his Servants here before. But note, that the cause of the coming of *B.* being unknown to *D.* his presence might, and in likelihood did strike terror in *D.* and so the presence of the Servants did or might strike terror in the party murdered, and gave encouragement to the Master.

“If any shall stab or thrust another, that hath not any Weapon drawn, or hath not first stricken the party; if the party so stabbed or thrust dye within six months, although malice forethought cannot be proved; the party offending shall not have benefit of Clergy, but shall suffer death, as in case of wilful Murder. 1 *Jac. 8.*”

5. Note also, That in case of Murder, it is not material who giveth the first blow; for if he that is slain gave the first blow, yet if there were malice premeditated in the other, it is Murder in him that killeth him.

6. Also