

§. 11. 6. Also in case of poysoning, the party poysoned must dye thereof, within a year and a day, after the poyson received.

Also if a man do beat or hurt another, whereof he dyeth, to make it Murther or other homicide, the party hurt must dye within a year and a day next after the hurt done or stroke given. But to have an appeal, it shall have relation to the death, and not to the stroke, so as the appeal must be brought within the year after the death, and not after the stroke.

§. 12. 7. Note also; In Murther, or other Homicide, the party killed must be in esse, *sc. in rerum natura*, and born into the World: For if a man hurteth a Woman with child, whereby he killeth the Infant in its Mothers Womb, by our Law (at this day) this is no Felony, neither shall he forfeit any thing for such offence: and whether (upon a blow or hurt given to a Woman with Child) the Child dye within her Body, or shortly after her delivery, it maketh no difference: yet in ancient time it was holden to be Felony; and M. *Bracton* took it to be homicide, if the blow were given *postquam puerperim animatum fuerit*: But if the Mother of the Child dye within a year and a day after such hurt done to her, and upon that hurt, this is Felony.

So if the Adulterer, &c. counselleth the Woman to murther the Child when it shall be born, and she doth accordingly, the Adulterer is accessory to this Felony, by this his counsel given before the birth, *Co. 7. 9.*

Also if a man killeth a man unknown, yet it is Felony, *Abr. d'Ass. 76.*

8. Compulsion also is a good excuse in our Law in some cases, as if any mans Arms be drawn by compulsion, and the Weapon in his hand by means thereof doth kill another, this is not Felony in him whose Arms were so drawn; &c. *Plö. 19. a.*

9. Involuntary ignorance excuseth also with us: so as if an Infant not having Intelligence, or a man of *non sana memoria*, shall kill another, this is no Felony in them. See hereof *hic postea.*

10. Intent to do a Felony or Murther, is not punishable by the Common Law of this Realm, until the act be done: But in Treason and in some other particular cases by Statute, the intent may be punished. *Doct. & Stud. 132. hic.*

In cases of Murther or Poisoning, the offenders shall not have the benefit of Clergy, *1 E. 6. c. 12. 23 H. 8. 1. & 26 H. 8. 12.*

Note also, That by the Law of God no recompence was to be taken for the life of a Murtherer, who purposely hath committed Murther, but he shall be put to death: for Murther defileth the Land; and the Land cannot be cleansed of the blood that is shed therein (by wilful Murther) but by the blood of him that shed it, *Numb. 35. 31, 33.*

§. 13. And by divers old Statutes, no Charter of Pardon ought to be granted to any person, in case of Murther or other Homicide, save only where the King may do it by his Oath, that is to say, where a man killeth another in his own defence, or by misfortune. See *P. Pardon 1.* Also the Statute of *6 Edm. 1. cap. 9. 2 Edw. 3. cap. 2. 4 Edw. 3. cap. 13. & 14 Ed. 3. cap. 15.*

And by our Law at this day, a Pardon of all Felonies will not discharge Murther, except the Pardon be with a *Non obstante*, &c. or that Murther be expressly mentioned in the Pardon. See *Co. 6. 13. b.*

Neither will a Pardon of all Felonies discharge a man that is attainted of Felony, except also the Attainder and the execution be pardoned. See *9 E. 4. 29. Co. 6. 13. b.*

And