

Two combat together upon the ſudden, and part, and preſently after meet and fight again, and the one killeth the other; or the one preſently fetcheth a weapon, and cometh and killeth the other. This ſeemeth but Manſlaughter, for that it is done all in one continuing fury, which was at the firſt without Malice, and could not in ſo ſhort time be appeaſed or aſwaged, *Cromp. 23. b. 24. d. 26. a. b.*

So if two have born malice the one to the other, and be reconciled, and after meeting again, they fall out upon new occaſion, and by agreement immediately they go into the field to fight, and the one killeth the other; this ſeemeth but Manſlaughter, (*cauſa qua ſupra*) unleſs the reſpite or diſtance of time had been ſuch, that by reaſonable conjecture their heart might be aſwaged. Lamb. 240

And yet by good opinions it is lately holden, that in both theſe laſt caſes and the like, though it be in a continuing fury, yet if it be wilfully done, it is wilful Murther; for which the Offender ſhall ſuffer death. See more of Manſlaughter before in *Murther*, and after in *Miſadventure*.

What Perſons are chargeable with Homicide, and what not.

C H A P. CXLVII. V. 95.

Non compos mentis.

IF one that is *Non compos mentis* or an Ideot kill a Man; this is no Felony, for they have not knowledge of good and evil, nor can have a Felonious intent, nor a will or mind to do harm: And no Felony or Murther can be committed without a Felonious intent and purpoſe; for it is called *Felonia, quia ferri debet felleo animo*. *Co. 4. 144.*

And again, *Actus non facit reum, niſi mens ſit rea*; and a Mad-man is *Auiens, id eſt, ſine mente*, without his mind or diſcretion, and is only, and enough puniſhed by his Madneſs, *Co. L. 247.*

So it is, if a Lunatick perſon killeth another during his Lunacy, ſit is no Felony, (*Pla. 260.*) For all acts done by him in his Lunacy, are as the acts of an Ideot; *Co. 4. 125.* Hob. p. 96. 134.

Uncore iſels perſon ſerra puny in Treſpas, pur hurt ſuit ah corps chauteon

If another Man ſhall upon malice procure a Mad-man to kill another, though a Mad-man ſhall be excuſed; yet the inciter or procurer ſhall be puniſhed as a principal, *Ba. 57. Vide hic cap. 108.*

Now there be three ſorts of Perſons accounted *Non compos mentis*, to this purpoſe, and theſe like:

1. A Fool natural, who is ſo (*a natiuitate*) from his birth, and in ſuch a one there is no hope of recovery; but

2. He who was once of good and ſound memory, and after (by ſickneſs, hurt, or other accident, or viſitation of God) loſeth his memory.

3. A Lunatick, *Qui gaudet lucidis intervallis*, and ſometimes is of good underſtanding and memory, and ſometimes is *Non compos mentis*.

Infant.

A An Infant of eight years of age or above, may commit Homicide, and ſhall be hang'd for it, *viz.* ſit may appear (by hiding of the perſon ſlain, by excuſing it; or by any other act) that he had knowledge of good and evil, and of the peril and danger of that offence. See *3. El. 7. 1. 6. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

And yet Sir *Edw. Coke* upon *Littleton*, ſi 147. ſaith, That it is of an Infant, until he be of the age of fourteen years (which in law is accounted the age of diſcretion) as it is with a Man *Non compos mentis*; and that in

Criminal