

Criminal Causes (as Felony, &c.) his act and wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea*, &c. Sir Fr. Bacon 38. accordeth.

But if an Infant of such tender years, as that he hath not discretion or intelligence; if he kill a Man, that is not Felony in him, 3 H.7.1. b.

Plow. 19. If one that is dumb killeth a Man, it is Felony; yet *quere*, how he shall be arraigned.

F. Coro. 193. Stauf. 16. A Man born deaf and dumb, killeth another, that is no Felony; for he cannot know, whether he did evil or no; neither can he have a felonious intent, &c. See hereof, *tit. Surety for the Peace, antea*. Otherwise, if he were not so born, but becometh so afterwards. See Br. Coron. 101. & 217. That a Man which can neither hear nor speak, may commit Felony, and shall be imprisoned, &c.

Yet note, in these former Cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance; and therefore the Law accounteth such Act of theirs to be no Felony.

Plow. 19. Co. 4. 125. But if a Man that is drunk, killeth another, that is Felony of Death; for it is a voluntarily ignorance in him, in as much as such ignorance cometh to him by his own act and folly. Sir Edw. Coke L. 247. calleth a Drunkard, *Voluntarius Damon*, and saith, That such a one hath no priviledge thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it.

Misadventure or Case. C H A P. CXLVIII. V. 96.

BY the Statute of *Marl. cap. 25.* killing a Man by Misfortune or Misadventure only, shall not be adjudged Murder. §. 1.

Misadventure, in a general signification, is where a Man is killed partly by negligence, and partly by chance, and against the mind of the killer; and when the killers ignorance or negligence is joyned with the chance; Or Homicide by Misadventure or Misfortune more legally, is when any person doing a lawful thing, without any evil intent, hapneth to kill a Man casually; by the Law of God there was a City of Refuge appointed for such persons to flie unto, *Numb. 35. 15.* & 22. *Josh. 20. 3.* for such an Act hapning in such sort, seemeth to be the Work of God himself. See *Prov. 16. 33.* & *Exod. 21. 13.* And by our Law now, this is no Felony of Death, neither shall there be any Judgment of Death given upon him; but he shall have his Pardon of Course, for his Life and his Lands; yet he shall forfeit his Goods in regard that a Subject is killed by his means. See *Stauf. 16. a. b.* *Fitz. Coron. 69. 302.* & 354. *Br. Forf. 9.* & *Co. 5. 91. b.*

See *Exod. 21. 20, 21.* *Stauf. 12.* As if a School-master in reasonable manner beating his Scholar, for correction only, or a Man correcting his Child or Servant, in reasonable manner; and the Scholar, Child or Servant happen to die thereof; this is Homicide by Misadventure, *Ord. 136.* *Black. 121.*

So if a Man shooting at Buts, Pricks or other lawful Mark, and by the shaking of his hand or otherwise against his will, he killeth one that standeth or passeth by, 21 *Hen. 7. 29.* *Rede. 6 Edw. 4. 7.* *Br. Coron. 59.* & 148.

So if a Carpenter, Mason or other person doth throw or let fall a Stone, Pyle or Piece of Timber from an House or Wood, or other thing