

Commandment shall be adjudged a party thereto, for that his Commandment was the cause thereof. *Plow. 475.*

He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged Accessary to all that shall insue upon the same evil act, but not to any other distinct thing. *Ibid.* As if

Plow. 475. A. commandeth B. to steal a Horse, and he stealeth an Ox, or to steal a White Horse, and he stealeth a Black; or to rob a Man by the High-way of his Mony, and he robs him in his House of his Plate; or to burn the House of B. and he burneth the House of C. These be other Acts and Felonies than A. commanded to be done, and therefore A. shall not be adjudged Accessary to them.

But if B. shall commit the same felony which A. did command or counsel to be done, though he doth it at another time, or in another place, or in another sort than A. did command or counsel, yet here A. shall be Accessary thereto; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Pa. 66, 67.*

Ibid. As if A. doth counsel B. to kill C. by Poyson, and he killeth him with his Dagger, or by other violence; or to kill C. by the High-way, and he killeth him in his House; or to kill him one day, and he killeth him upon another day. In these, and the like cases, A. shall be Accessary to the Murther.

Lamb. 283 A. counselleth B. to poyson C. and to that end, A. buyeth Poyson, and delivereth it to B. who tempereth it in an Apple, and delivereth it to C. with intent to poyson him; and C. knowing nothing, giveth the Apple to E. who eateth it, and dieth thereof. Here A. is not Accessary to the Murther of E. yet it is Murther in B. *Plow. 475, 476.*

A. counselleth or commandeth B. to kill C. and after, and before he hath killed him, A. doth repent him; and countermands it, charging B. not to kill C. and yet after it, B. doth kill C. Here A. shall not be adjudged Accessary to the death of C. for the Law adjudgeth no Man Accessary to a felony before the Fact, but such as continue in that mind at the time that the same felony is done and executed, *Plow. 475.*

Dyer 186. Co. 7. 9. 2. But if A. counselleth a Woman to murther the Child in her Body (when it shall be born) and after the Child is born, and then the Midwife or other Person, in the presence of the Mother, and by her commandment, killeth the Child; although it be done in the absence of A. yet he is Accessary by his counselling it before the Birth, and not countermanding it, *Dyer 186.*

Lamb. 283. 14 H. 7. 31 A Man foreknoweth of a felony intended to be done, and doth conceal it, and so suffereth it to be effected: This maketh him no Accessary to the felony, except he consenteth thereto; but such Concealment seemeth to be only Mispriison of Felony, and finable. And yet the Rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quere.* And *Bracton, fol. 121.* speaking of Murther saith thus, *Ille, qui cum possit hominem a morte liberare, non liberabit, immunis esse non debet a pena.*

§. 6.
Mispriison.

Moors Rep. p. 461. Moors Rep. p. 666. Co. 4. 44. Note, That in Manslaughter there can be no Accessary before the Fact, for Manslaughter is upon a sudden falling out.

See also in Forgery made Felony, by the Statute all are Principals, *Boaths Case.*

Note also, That none shall have Clergy who maliciously commandeth, hireth or counselleth any Person to commit any Petty Treason, or wilful Murther, or to do any Robbery; *4 & 5 Ph. & Ma. c. 4. See Dyer 183, 186. Co. 11. 35.*