

But in a late Case of one *Mawgridge*, we are told, That if a Man assaults another with a dangerous Weapon, but without any *Provocation*, 'tis *express Malice* from the Nature of the Fault, which in itself is cruel.

Such a Provocation which may extenuate the Fact and make it *Manlaughter*, must be where there is some actual Force or Violence offered or done to the Person killing by him that was killed; for the most opprobrious Words or affronting Gestures, are not accounted in Law any Provocation, unless there is some Assault.

But if angry Words pass, and afterwards one pulls the other by the Nose, or if he only fillips him with his Finger, and the Person thus assaulted kills the other, this is no more than *Manlaughter*; because the Peace was broke by the *Person who was killed*.

But where the Peace is first broken by the *Person killing*, there 'tis otherwise; and this is the Case of *Mawgridge* before mention'd, (*viz.*) He threw an empty Bottle at Mr. *Cope*, which struck him on the Head, and immediately drew his Sword and gave him a mortal Wound; but between the time of his drawing the Sword and the Wound given with it, Mr. *Cope* threw another Bottle at *Mawgridge*, with which he broke his Head, but Mr. *Cope* was kill'd, his Sword being never drawn: This was adjudg'd Murder upon a special Verdict, and of Malice prepens'd, because the throwing the first Bottle was with a Design to do some Mischief, and the sudden drawing his Sword was to prosecute that Design; and though Mr. *Cope* threw another Bottle at *Mawgridge* before the Wound was given, that will not alter the Case, because it was in his own Defence, and therefore lawful for him to throw it.