

If two Men give each other reproachful Words, and a third Person strikes one of them and kills him, this is Murder.

So where one Man assaults another without any manner of Provocation, and runs at him with his Sword drawn, and then the Person assaulted draws his Sword in his own Defence, and is killed, this is Murder.

But if two Men fight, and a third comes in to assist one of them, and killeth the other, this is only Manslaughter, because there was an actual fighting, and the Peace broken between the other two before the third came in.

And yet if a Man is unduly arrested, or by any other means deprived of his Liberty, and he submits without making any Resistance, and another in rescuing him kills a Man, this is Murder; because Injuries must not be redress'd by Force or Violence, but by Law.

If one who is wounded shall neglect his Cure, or lives afterwards in a disorderly manner, yet if he dies of his Wounds, 'tis either Murder or Manslaughter, as the Case shall fall out upon the Evidence; and the Reason is, because the Wounds were the principal Cause of the Death which ensued.

Malice is likewise implied where one kills another who hath *not a Weapon drawn*; which are the very words of the Statute 1 Jac. cap. 8. commonly call'd, *The Statute against Stabbing*.

Five Years after the making that Statute it was held, That if the Person slain had but a *Stick* in his Hand, it should be accounted a *Weapon drawn*.

The Words of the Statute are, (*viz.*) Stabbing another who hath not then *any Weapon drawn*, or that hath not *then first stricken* the Party stabbing,
and