

and the Person dying within six Months then next following; this is Murder by that Statute *without benefit of Clergy*. There is a Proviso, that the Act shall not extend to one who kills another in his own Defence, or by Misfortune, nor to one who in keeping the Peace, or correcting his Child or Servant, shall unwillingly commit Manslaughter.

Several Cases have happened upon this Statute, which hath been expounded with a great deal of Nicety in respect to these words (*viz.*) *Or that hath not then first stricken the Party who stabs.*

As for Instance; In the 9th Year of Car. I. one Byard struck Ward, who struck him again, and then Byard stabb'd him: The Question was, whether he should have his *Clergy*, because the Person so stabbed, struck him before the Stab was given? And adjudged he should not; because the words *first stricken* in the Statute shall be construed the very first Stroke given by the Person slain at the beginning of the Quarrel, and not any Stroke before the Stab; so that if he who is killed, did not give the first stroke, the other who killed him, tho' he was stricken before the Stab, shall not have the Benefit of his Clergy.

There have likewise been several Expositions upon the Words what shall be a *Weapon then drawn*: As where two quarrelled and one threw a Pot at the other, but it missing him, the other drew his Sword and killed him: The Matter was found special, and the Doubt arising whether the Particle *then* should relate to the Beginning of the Quarrel, or to the time of the Stroke, it was the better Opinion, that it should relate to the Beginning of the Quarrel; for if in fighting one lets his Sword fall, or throws it at the other and is then killed, 'tis plain he had not a *Weapon then drawn*, that is, either to defend himself or offend his