

Adversary, at the time when he had the Wound given; but yet because it was once drawn during the Quarrel, the Prisoner shall have his Clergy.

The Defendant was indicted for Stabbing, and two more who were present and abetting him, and they were all found guilty; yet the Person who gave the stroke shall be only hanged, and the other shall have their Clergy; for where 'tis known who gave the Stab, tho' all who were present and abetting are Principals, yet the Statute being so penal, shall be extended to him alone who *actually stabbed the other*.

Anno 15 Car. A *Welshman* having a Leek in his Hat on St. David's Day, was jeered by a Porter in the Street, and thereupon he took a Hammer out of one *Marbury's* Shop, and threw it at the Porter, but missing him, kill'd *Marbury*: The Question was, Whether this was within the Statute of Stabbing? for *Marbury* had not a *Weapon then drawn*: and adjudged that it was not; and probably the Reason may be, because the *Welshman* had no Anger against *Marbury*; and he was within the Proviso of the Act, which exempts the killing by *Misfortune*, as this was.

But those who have seen this Record tell us, that the *Welshman*, whose Name was *Williams*, was not indicted for Murder, but for Manslaughter on this Statute; and that if he had been indicted for Murder, he ought to have been found guilty, because the Provocation was not so great as to excite him to kill another.

Malice shall likewise be implied in many Cases where an Officer is kill'd in the Execution of Justice; but in some 'tis only Manslaughter.

If a *Constable*, or any other Person assisting him in the Execution of his Office, is killed, this is Murder; but then the Person who killed him must know