

this was only Manslaughter, because it did not appear that he discharged the Gun against any of the King's Officers, tho' it might be reasonably intended he did, because he was armed with a Gun, and was in Prosecution of an unlawful Design, in which he was obstructed; but if it had been found that he discharged the Gun at the King's Officers, in such case, if he had kill'd one of his own Party, tho' by Accident, it had been Murder, but not in the rest, unless they knew he design'd to kill any of the King's Officers.

In some Cases Malice may be collected out of the Circumstances, shewing the Temper of the Person killing.

As if one assaults another with an Intention to rob him, and being resisted, he kills the true Man, this is Murder; so 'tis if a Gaoler kills a Prisoner by hard Usage.

If two fight in a Tavern and are parted, and one of them alledgeth the Place to be very inconvenient to fight in, and thereupon they appoint another Place to which they both go immediately and there fight, and one is killed; 'tis Murder, because Reason prevailed more than Passion, so as to judge of the Conveniency of the Place.

So if two quarrel in the Morning, and fight in the Afternoon, and one is killed, 'tis Murder; for there was a reasonable distance of Time by which the sudden Heat might be allayed, and therefore the second Meeting must be with a malicious Intent to do Mischief.

There is a very nice Distinction made by some former Writers on this Subject, (*viz.*) If two quarrel and one is wounded, afterwards they meet and the wounded Man kills the other, 'tis Murder; because Malice shall be intended in him, occasion-
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