

Use of both Com to mand and discharge him to do it off, not  
with standing Committ the felony, it is not necessary; he  
being only necessary to a Crime who hath the felonious  
intention to have it done at the time when it is committed  
Pulton's case 138 Hale's pleas of the Crown 217. But some  
are of Opinion that the Error of Criminal advice is not  
to be Excused by the Counsel simply for wanting and advising  
to the contrary; Unless he is so Acquainted the person he  
is against whom the Design was laid, that he may respond of  
harmis way, and provide for his safety; Prosp. Carim. de Pon  
toribus &c. Quast. 129 n. 92. Whatever might be the  
intention of a Crime, he who Peremptorily orders it to be done,  
is punishable in the same way, and Manner as the prin  
cipal Actor. Whether he would have done it without  
that Mandate or Not. Nam quia Mandatum dicit in  
Delictum, no queritur, an Mandatarius per se Committit  
Comes. in 5 De habel. Instit. de Satione. Thus one who gave  
Orders to Commit a Crime, or Committed and bound  
out the Committer, was found Arl and part thereof June  
1673 John and Angus M<sup>r</sup> in the. The Giving Commands  
to fire, whereby Raughter is committed, is just raised betw  
want to infer Arl and part of the slaughter, 31 July 1699  
Koth of a on hull and God on. Year not only is Arl and part  
of the from Direct orders to Commit a Crime, but even from  
Giving orders to do a thing Unlawfull, that hath a probable  
tendency to Effect or produce a Crime. Thus he who orders  
another to receive a Man, is guilty of Murder if the person  
hath Chance to die of the wound given him. See Michil  
Interest. De ad quis, and Casam moris probat l. 15  
per. ff. de S. Corhol. de fear. And wounded are not punished  
as Monstrum, Clar. fontent. hb. 5 § fin. de Inst. 38 n. 5.  
Prosp. Carim. ibi. Quast. 133. n. 168. The Advisor to a Crime  
is necessary to all the Evil Consequences thereof, if  
one order another to burn a house, and other houses  
are close with burnt, he is necessary to all. And the  
Commander to do a felony is necessary to it, the Com  
mitted in any other place, time, or Manner than was  
Commanded.  
If one Command or advise another to wound or beat  
a third person with a stone Staff, or Reception  
Mortal, and the Mandatary do it with a sword, or  
the

the wounding or beating, do kill, the Mandant is not liable  
to Capital, but only to an Arbitrary punishment. Clarus  
lib. 1. Prosp. Carim. ibi. n. 152. 153. Where the Execution  
Varies from the Command in the person slain, as when one Man  
is killed for another; or in the Nature or kind of the offence,  
as when a horse is stolen in stead of a Cow, or when one Comman  
ded to Rob another as he goes to the Market, Breaks open  
his house and Robs it: the Commander is not necessary,  
Flow. 475 Pulton's case 137 b. 138. Hale's pl. Cr. 217. But  
he would be liable to an Extraordinary punishment, Mand  
de Arbit. Quast. Cas. 353. n. 9. It cannot be Determined by any  
General Rule, what words only Import a Command to Commit  
a Crime. It may be Conceived in a large word, as when one  
says to another, that he will do an Injury done to him were he  
wounded, that implies an order to that other to do it, Prosp.  
Carim. de Confultoribus &c. Quast. 134. n. 4. One's De  
firing a Messenger in the Execution of a Execution, at his  
own part of Murder Committed by the Messenger of June  
1675 John and Angus M<sup>r</sup> in the, in regard that was no  
positive Command to kill but an order, which in Materia  
licita Imported no more, than that all Endeavours should  
be used to Execute the Execution, tho in the Execution these  
of slaughter by illegal Resistance should be upon to be  
committed. Yet Arl and part will be inferred from uttering  
words that properly admit of no other sense than an or  
der to Commit such a Crime, so one was found guilty  
of Deforment, for that he being apprehended by a Mes  
senger, the prisoners for made way for his escape by In  
sulting the Messenger and his adherents, upon the latter  
calling to him for help, and to give these men their re  
ward 9 July 1675 Trazor of Hillside & Colborn. Where  
one at a field Conventicle which a party of the King's  
Soldiers was come to Distrust, Taid to those assembled  
with them let there be no Cowards here to day first  
and let those who have Arms go out before or the  
like Expressions; such Counsel or Command was ju  
-stified Relevant to make him guilty of Murder Com  
-mitted by them upon one of the King's party, 11 Sep-  
-temb. 1678 James and George de Mont. de Temple. That  
death ought not to be inflicted for words; Malcol  
1074