

very clear and pronounced by one pre-occupied with
 the law. *McKenzie* from part 1 July 1551. Because with
 words are often uttered in jest, as when one of our
 Kings deposed his subjects in Calicut to go say their prayers in
 balls. Where one orders a person to commit a crime, and he
 refers the doing of it to another who executes the command
 being the doer of the first order as
 as Equally guilty with him by whose immediate order the
 Crime was committed

Which is consonant to the English law, *Howe* 475. 476.
 But this seems hard to Sir George Mackenzie (sic) because
 the Giver of the first order might have had a special
 View therein to the Receiver's Discretion and would not per-
 haps have had the like freedom with another. Here
 fore *Capocci* (Cautel. 39) and *Mencius* C. d. Arbitr. jud. Quasi
 Cal. 333 are of opinion, that the grantor of a Commission
 to kill, is not liable if the Murder was committed by any
 other than he to whom the Commission was given, some
 Lawyers will have him who suffers a man to be killed
 when he could hinder it without incurring any Danger,
 to be liable to an arbitrary punishment. *Corpus*,
 Crim. part 1 Quest. 32 n. 12. Because not doing good when
 it is in our power, is doing hurt. But others think you
 are not obliged to hinder a Crime to be committed, or
 to assist the person injured. *Prosop. Garin* de Confil.
 l. 1. q. 1. 130. n. 61. & that simple knowledge of a
 felony to be done, will not make a man accessory to it;
 tho' he neither hinder nor reveal it, nor pursue the
 felon. *Pullover* page 137. 6. *Albert* Mandate in civil cases
 can be proved only by Serjants and Juraments; yet Crimi-
 nal Mandates are probable by witness, as Crimes
 and act and part thereof are 9 March 1671 Charles
 Robertson to his sons *McKenzie* lib. 34 inf. 1. Page
 can be no accessory before the fact in Manslaughter,
 tho' being a Crime committed ~~without~~ ^{without} premeditation or
 fore thought *Code* 4 Reg. 44.

One may be accessory to a Crime by deed Concomi-
 tant who consents to it at the time of doing, *Code* 3 Reg.
 17. to. 1. *Paul* was consenting to the death of a
Stonewall lib. 51. An assistor to the Commission of a
 Crime

Crime is act and part thereof, so the assistance was im-
 mediate and the assistor knew himself to be contributing
 to the Commission of a Crime, which knowledge is not to
 be presumed but must be proved. For the giving remote
 assistance to the Commission of a Crime, at the ending of
 arms to one who there with committed Murder, is no
 guilty accession to the Murder if the donor knows the thing
 of the common intention, tho' one may happen innocently
 to assist a criminal, as when a thief gets a person upon
 the Road to help him to drive away stolen Cattle, as if
 they were his own, *McKenzie* lib. 57. Those who keep the
 Crime, or who hinder the Rescue of such as are pursued
 are guilty of assistance act and part of the Crime

He who is found in Arms near the place
 where a person was killed, without any other business
 there at the time, is reputed an assistor, if he was known
 Enemy to the Deceased, or friend to the Murderer, or if the
 Attacker became bold, or the person Inward fainter at
 his presence
 Persons attending
 Arms at the Commission of Murder or any other Crime,
 with a Design to assist the Actor, or knowing what was
 to be done, are reckoned Accessories thereto and punishable
 as the principal Actors, tho' they did not contribute
 any Active assistance. *Prosop. Garin* de Confil. l. 1. q. 1.
 Quest. 131. n. 67. & *Sigg.* junct. n. 78. Persons at a field
 Conson like with arms, where one of a party of the
 Kings soldiers that were Detached to dissolve the Meet-
 ing was slain, was found Relevant to infer guilt of
 the Murder if *Prosop.* 1678 James and *Goodale* months
 and *Temp.* 16. Present with Naked Weapons or Guns pre-
 sent the time of Slauhter committed, was once sustained
 Relevant to infer only an arbitrary punishment 31 July
 1691 North of *Scutell* & *Ordons* but afterwards in another
 case Naked presence with weapons drawn at the committing
 of Slauhter, was found Relevant to infer act and
 part of the Crime 18. & 19 August 1691 Master of *Garbel*
 & others. Presence and assisting or Concurring by deed
 or words in a tumult within Burgh, altho' without
 Arms, is Relevant to infer act and part thereof 6 May
 1685