than that he should die for it. But when the Latrones & Mar
acted by a principle of Covetousness, they'll kill a Man th
Refuseth tamely to part with his Money, or that may Dis
whom if he escapes with life. And sometimes they'll Murde
a person sleeping, that they may with the more freedom
and safely rifle his house. Some Execrable villains have
been found to drive to that height of Wickedness as to kil
up a Woman with Child, and pluck the Child out of her
belly, to Mock her with the Hands thereof towards wi
wax, that those being lighted in a house they Design to
Rob, they may carry off things without Restraint or opp
sition: it being Storied, that those lights have a Charming
Influence upon all who are a sleep there, as to hinder them
to be awaked Carpzov. ibid. n. 59. 60. 61. This is a Crime
abominable, that Lawyers hold it to be punishable by
vate Authority, and Forreinishable by the Prince; and
when Legal Judicia by the Judge may pronounce Sentence
without observing the ordinary form of Process; and that
the person condemned cannot Appeal from such Sentence
Rodsp. Farin. de furtis qu. 167 n. 91. Damhoud. Crim. cap.
n. 6 Carpzov. Crim. part 1 quæst. 23 n. 18 & seqq. Those w
any way Judiciously Contribute to the Commission of
this Crime by their assistance, in standing, lurking or appro
the Door and perlustring of the Street are equally guilty as
the principal Actors Carpzov. ibid. quæst. 22 n. 30 & seqq.

By the Civil law affectus sine effectu, an ineffectual
design to Murder is punishable Capitally Cl. 7 de Accus. Cor
de sicar. But by the General Custom of Nations such a Crime
is now punished only Arbitrarly Jul. Clar. § Homicidium
n. 74 & fin quæst. 92 Gomez. 3 Var. Resol. cap. 3 n. 3 Boer
dec. 204. Crim part 1 qu. 2 n. 54. Ant. Matth. de Crim. lib.
48 Tit. 3 cap. 3 n. 11 Groenwegen ad § 5 Inst. de publ. Jud
Jo. Voet. Comm. ad Tit. Ff. ad L. Cornel. de sicar. n. 4. Thus
who for Waylaying and shooting at Anchor with a Design

to kill him, came in his and the King's Will, was only ba
nished and ordained to pay 1000 Merks to the Kings trea
surer &c. Feb. 1597. Stuart of Dundee. And Another who
called a Gentleman out of a house with a Design to Murder
him, and then made several thrusts at him with a drawn
sword, who avoided the same by a Stroke in his hand and Gol
ding hold of the hilt of the sword, was found liable only to an
Arbitrary punishment, 4 & 6 March 1695 Balfour & Hamilton
against Sir John Martin.

The Doctors are of contrary sentiments as to the question
whether an Ineffectual endeavour to commit parricide is
punishable in the same manner as if the Crime had been
accomplished: some holding that it is (Berlich. part 4 conc.
6 n. 45 Damhoud. Prax. Rer. Crimina l cap. 69 n. 5. Clarus
Rea l d. § ult. Prosp. Farin. de Homicid. quæst. 120 n. 152. Thus
also found and perplext the Matter with their many
Distinctions. But Julius Clarus (Sententiæ lib. 5 § fin.
Quæst. 92 n. 2) and Carpzovius (Crim. part 1 qu. 17 n. 12 &
seqq.) are of opinion, that in no Crime Bona fides quamvis
ad lectum Proximum fugerit Death may be inflicted to the
ordinary But only to an Arbitrary Punishment, Unless
it be so provided by Express Laws or Statutes. Whosoever
shall endeavour to kill his Mother, by Wounding her, was
in favour punished with death, Aut. Graber Cod. lib. 9 Tit. 11
de 2 Albeit Regularlie no Criminals are liable to the
ordinary punishment of affection, sine effectu, the Generality
of the Doctors hold, that an ineffectual Attempt to a Crime
a man, is equally punishable as if the Attempt had been
Accomplished, Jul. Clar. sententiæ lib. 5 § fin. in num. 7
Prosp. Farin. de Homicidio qu. 123 n. 77. Mascard. de prob.
lib. 1 Concl. 138 n. 2 per Damhoud. Crim. cap. 83 in pr. But
in the opinion of Carpzovius (Crim. part 1 qu. 19 n. 55)
This Deserves only an Arbitrary punishment, unless the
offender had arrived ad lectum proximum, and was Di
covered Just as he was Attacking the person he Designed
to Murder, in which case he allows the ordinary punish
ment to take place. With us in Scotland, an Endeavour