

the Robbery and Murder of the Decades, and 600 Words to the King's wife, December 1790. *Tria. Armstrong & For.* Proving that thro' the lock hole of a door of a house wherein only a Man and his wife were, was sustained to justify only an arbitrary punishment against the husband, because it was not certain which of them shot. Albeit the wife was not so likely to handle fire arms as the husband, and when the door was broken open, he was found with the Gun which had charged with a second shot 27. November 1704. *James Somers - vol.* It was sustained Relevant to a strict indictment for Homicide by continued beating, to an arbitrary punishment; that the person killed was beat upon several in Rixa wherein they Interposed to Release a Youth in his gripes or struggling with him; because it was not certain by whose stroke the deadly blow was given, and it was lawful to Endeavour to separate quarrellers. Or separation it was found Relevant to a strict indictment to an arbitrary punishment, that the Decades was beat upon several, who, tho' they had wounds about them made up only of Staffs or batons, which joined to the uncertainty of the person who gave the killing blow, was found sufficient to Excuse a fatal wound of death 22 January 1712 *Burnet of Carlisle to Cornhill London.* And the many are of opinion, that Author Rixa wherein one is killed is liable to the ordinary punishment of death if it be not certainly known who was the killer. *Prosp. Farin. de penis hom. p. 96 n. 63 b. legg. Lamb. Crim. cap. 7 b. n. 28.* others with more Reason justify him only to an arbitrary punishment. *Jil. & Car. p. 10 lib. 5 § Homicidium n. 29.* *Barlich part 4 Cov. l. 11 n. 58.* *Carproz. Crim. part 1 Ju. 20 n. 50.* For albeit it be the same thing upon the Matter to kill and to be the immediate and necessary occasion of one's death l. 15. *Ad. & Burnet l. de fear.* It is that proved to be the accidental and Remote occasion is not Misdemeanor in law to be so guilty as the person that kills. And it was sustained Relevant to a strict indictment against one for Manslaughter to an arbitrary punishment, that he committed it

in Rixa whereof the person killed was Author 6 March 1711 *William Hunt. 26/ March a Man is killed by mere perjury Malice, and several Conjurors and but their assistance depending to the Accomplishing of the fact: all are punishable as Misdemeanors, tho' there was but one wound given; who tho' the Justifier be known or not, or whether it was inflicted by all or some only or by one.* *Jul. Clar. Homicidium n. 37. Carproz. Crim. part 1 Ju. 25 n. 11 Prosp. Farin. de penis hom. p. 96 n. 24. 36. 37.* Because it had a Misdemeanor design, and probandum causam Mor. tis by Intending the Misdemeanor and Discharging the person attacked with their assistance. *Jil. & Car.* was sustained Relevant to infer the pain of death against one of two or three Indiors who all die without order first, their pieces in the Northern Bow port of Edinburgh; that a man upon the street near to the port was upon that firing from fall and found to have received a wound by a shot whereof he died immediately 3 August 1721 *Samuel Matthews. 5/ When in a Tudden he fell & ultimately was mortally wounded by several persons, and it is not known who gave the first wound, every one who wounded is punishable with death. Jul. Clar. ibid. n. 41. Carproz. Crim. n. 27. 28. 4/ When he killed in a Tudden chiefly by several persons, and it appears who gave the Mortal wound; he and he only should die for it. *Homicida omnino quod alibi fecit semper Exportet l. 38. de Crim. Tit. And the Rest are liable only to an arbitrary punishment. Jul. Clar. ibid. Carproz. ibid. n. 19. 46.* Thus where several Indiors one after another die without order first their pieces in thro' the Northern Bow port of Edinburgh; it was found Relevant to infer the pain of death against the second person who so fired, that a Man upon the street was observed to fall at the second shot; and immediately found Mortally wounded, of which wound he died 3 August 1721 *Samuel Math.**