

Matthews. 57 When in an accidental, scuffle one is wound
by several persons and dies of all his wounds the portion
of these wounds was mortal of it self all who inflicted
them are liable to an arbitrary punishment Caspov
ibid. n. 42 & fagg.

What is act and part of Murder or Manslaughter
can hardly be defined: because it depend upon the affix
as Judges the use of Morden is in my part i. G. 11. 5 17. 9. Who
one kills by order of another, both are alike guilty of Murder
Caspov. in my part i. qu. 4 n. i. He who obeys the orders
is inexcusable: because turpis Vol. Juris de rei Mandati
non est obligatorium l. 65. § 27 l. 12 § 11. § Mandati. Nor
will a Master or fallow command warren and a servant
or child to break the law l. 20. ff. de oblig. & act. l. 5. ff. de
Acid. Caspov. ibid. n. 7 & 8. He who lets the Murderer or
Wound, is liable to the same punishment with him who
committed the Murder. L. i. ubi nihil futurum est occidat qui
an vero causam Mortis dolo malo practicat l. 15. ff. de
Cornel. de sicar. & quod quis pro a crimine facit per seipsum
facit & dicitur. For the best turpis nulla in parte oblig
tionem vel actionem inter Mandan et partem prejudic
l. 65. § Mandati. It affords action to the party prejudic
by the Execution of the unjust order against him who gave
it Caspov. ibid. n. 13 & 14. A Verbal Command and bound
out in General to Commit slaughter, was found to be
under the Compact of act and part of June 1673. Minto
of Brothers and others. Where one was killed by a shot
that came from one of several persons, and the particular
person who did shoot unknown, he who gave command
to fire, or any who actually fired were found liable to
the pain of death, 31 July 1691. Death of Southwell and
others. Where a Notorious Murderer flying pursued
was killed by order of the Magistrate was killed in the
pursuit after he offered to give himself prisoner
it

it was found relevant to infer the pain of death against
him who gave command to hit at and and part, but not
against others engaged in the pursuit, in regard they
were assisting in both L. 24. ff. ult. P. 10. l. 1. § 1. § 1. § 1.
Caspov. Noviss. & Underfoot. It is said a servant who by his
Masters order surprised for and entered a Gentleman out of
his house to speak with his Master, found out and part
of his Masters assaulting the Gentleman killed and with a
drawn sword: Because the servant was servant in his
466 march 1695. Balfour of Dundee, Noviss. If it a question
much to find, whether if one having orders to wound only
killed a man, he who gave such orders is he liable to have it
punishment? which the Factors these law by the Act kind
tion. If what it added to the said could not in all proba
bly produce death, and he who got such orders doth ex
ceed in the Execution and kill, as when a Man orders a
thor to deal with a staff or with his own hands, and he
kills with a sword: in that case he who gave orders to deal
is not liable to the pain of death. G. 1. § 1. l. 6. § 1. § 1.
Caspov. ibid. n. 17-18. But if one be ordered to wound only with
a sword and he kills: the person who bid him wound is
punishable by death, altho the other proposed Mandati
Gul. Clar. ibid. Monach. ibid. n. 2. et al. Matthews de Crim.
Gul. de sicar. cap. 3 n. 16. Caspov. ibid. n. 21. because wounds
cannot be inflicted ad mortem: it in L. 1. § 1. § 1. § 1.
it is Mandati et ad mortem of the Lord, et al. in M. 1. § 1. § 1.
tion. Now one who betters will be liable to a Commis
sion to wound, in the pain of death the he is signed and
to exceed the orders given him. For the Breach Mandati
non tenetur ubi Mandati et ad mortem et al. § 1. § 1. § 1.
to do only in Civil Contracts where one or two can
a Commission is obliged to the Commission & so on
date in quantum Mandati et; and not in Crim. where
one by giving orders to Commit the murder under no
actual obligation to the Committer in pursuance
of his orders. Some lawyers are of opinion that