

land of another person and only taken up by the person
after the slaughter 19 August 1691 Mr of Garbott and other
ratification and approbation of slaughter as just fact
after it was committed do the not make the one guilty as an
and part thereof; if he was not a de Mandator case
18 & 19 August 1691 Mr of Garbott & others.

Murder is one of the four pleas of the Crown by
Malesm. 2 cap. 11 Whose of the Cognizance properly belong
to the Lord of Justice. And Commissioners ought not to
be granted for trial of it Act 7 Parl. 11 S. 6. but yet such
Commissioners use to be granted for trial of Murder where
Crim. part 1 Fel. 11 § 21 Hobson on de. act 75. And Bailiffs
Aggally are in use to try it without any special Commis-
sioners having power of writ and Gallows in
Shire and Barons having power of writ and Gallows in
Judge Murderers taken red hand i.e. in hot blood or found
atly after committing the Crime, within three years act of
Parl. 6 S. 1. i. c. 1. act 28 Parl. 3 S. 4. act 4 S. 5. Parl. 11 S. 6. the
cause Evidence of a recent crime is supposed to be more at hand
and clear. With which two of those provided not to the trial
the Cognizance falls to the Court of Justice who are charged
Murder upon Felon where is Crim. part 1 Fel. 11 § 21 but the
Sentence cannot be put to Execution till after 30 days, if growing
in any place to the Southward of the River forthy, or 40 days, if
pronounced in any part to the Northward of that River
11 G. 1. cap. 25. 8. De. infra. pag.

By the Civil law who did not allow homicide to be tri-
without a prior trial for an hour was under some necessity
to Rescuse his predecessor death, that the Crime might
not pass unpunished: for by Neglecting to do it, he forfeit
the Inheritance; as being a person unworthy of it 1778
1st qui b. ut in dig. l. 1. c. 6. l. 10. C. 9. C. 10. 19. n. 8.
word every where in digest Fel. Clar. l. 5. § 1. qui. qu. 19. n. 8.
Crim. part 1, qui. 34 n. 74. Juris pond. Coron. part
4 Const. 11 S. 10. In England a Murderer or Manslayer
may be accused and prosecuted either by way of Appeal
at the suit of some private person or by the King
injured, or by Indictment at the suit of the King.

In Scotland Murderers and Manslayers are tried at the suit
of either the friends of the person slain, with the Con-
-rives of the King advocate or procurator Fiscal, or at the
-stances of the Lord Advocate or procurator Fiscal without
the friends, by Indictment. The Indictment against one as
Accessory to, or aid and part of a murder killing a man it is
-tended to proceed, tho the principal party who killed him be
Neither cited nor banished fugitive for not appearing
25 & August 1691 Commission of Overtures.

Some are guilty of homicide by striking with a stroke or
wound, it must be supposed that the stroke was the immediate
and necessary, and not the Remote and Accidental occasion only
of the death Express Crim. part 1 qui. n. 63. 64. It had it was
found relevant to infer only an Arbitrary punishment, that
one whose Attack and blow was by another who had any
Weapon gave the Aggressor a thrust with the sword to get
from the other him, whereby he was wounded, the blow
Mortally upon a foot, he did that not to kill a man, but
wound and so Malo Regimine. Because about the person a wound
tho was not in periculo vitæ Compleatib, the Violent done
by him was proportioned to that offered in the assault
13 July 1674 William Mafon M. Lewis & in. par 1 Fel. 11
§ 10 infirm Glasgow in ordinary plea Murder by one bird
for slaying her, tho the wound given was not mortal, but
that the wounded person lived so long after, went about
his ordinary business, and died of Malo Regimine, or by some
other Accidental cause. At the same time, it is not every
good of Negligence or Mistmanagement in curing and taking
care of a wound not mortal, that sufficeth to justify that the
wounded persons death was thereby proceeded; But such a
as did proceed to over power and Master the Nature of
the wound, Prosp. Garin. de homicidio qui. 127 n. 25. It was
doubt full whether the wound was dead by or not, and no
Physician or Surgeon was called to take care of it, or if also
there was a Manifest oversight and Negligence or Mistma-
nagement in the cure, and the wounded person died, his death
is presumed to have proceeded from those causes, and not
from