

from the wound, *Tract. Jurin. ibid. n. 20.* By the law of England, if one wounded, did within Year and Day, it is no Excuse to the person who gave the wound that the other did this his own Negligence of the cure of it, or by his daily living, and not keeping that Rule which a person wounded should do, or that he might have recovered if he had not Neglected to take care of himself. *Tract. Top. 26 Rawlins p. 17* *Tract. 1 Plin*
 Hala *Tract. Top. 26* *Tract. 1 Plin*
 31810 because the wound was the principal cause of the death which ensued, and if that had not been the Man had not died; this word being the cause of the Gangrene or Abscess, and the consequence of the wound.

It is not necessary in a libel of homicide by wound or stroke to specify the Nature of the wound, if the person died immediately or in a little time after it was given. *Novemb. 1694* *William Barnichael.* For such a libel Words only to mention the Nature of the wound where the person wounded lived a considerable time after receiving of the wound and so might have died on *Malo Regimini.* Was a wound is not Exempted by libel to have been mortal it may be sustained to show for the person accused to offer to prove that the wound was not mortal by the parties living a considerable time after it, and the Judgement of Physicians who Inspected the Wound, and that he died of some other disease not arising from the wound *Witness Grim part 1 Tit. 11 s. 10.* But where it is libelled and offered to be proved that the wound was mortal, or that the party died of it, the person accused is not allowed to prove the contrary, that the wound was not deadly or that the party died of some other disease: Because that is contrary to the libel & he cannot *1669* *Mr William Somervell.* Albeit these words, that the wound was mortal and the party died of it, may be clept into a libel to cut off the pannel of defence and Exculpation: Which should vary here. And this he censure was for his pleading, that the privy Council of Scotland recommended the pannel to the King, who granted him a Remission.

Another Common plea in a trial for Homicide, is that the fact was done in necessary self Defence, or was Capital Homicide,

homicide, which is Recorded against a libel for Murder, the contrary to this quality thereof, that the offense was committed with Malice proposed or fore thought felony. Because albeit such a quality must necessarily be put in a libel for Murder, it need not be proved by the party, since law presumed it to be true; and so no oath being taken upon it, the Evidence produced in Defense doth only take off the Legal presumption for it, without any further positive proof. *Mackenzie's Crime part 1 Tit. 12 s. 6 part 2 Tit. 22 s. 2.* In fine. But concerning this plea of self Defence and Capital Homicide, there will be occasion afterward to speak more fully. *Tract. 1 Plin p. 199 s. 355-359.*

A libel for Murder, bearing that the party Accused cutt off call a man out of his house, and found him lying motionless on the ground, shot at him with a bladed Gun, who lay dead in a few moments, was sustained to show that the person had to call him out, and was not Manslaughter, in respect it was proved nothing by witness was called only if such a one killed him *15 Feb. 1697* *Mr Grim* *Mr Malloch of Myrtoun* *Tract. 1 Plin p. 199.*

Homicide may be proved by Judicial Confession of the Party on 22 November 1697 *Anna James* for 21 November 1697 *William Tol. 8 Decemb. 1720* *Richard Malloch.* But one confession simply to be guilty is not a sufficient ground to condemn a wife but still so far as the law is not binding in a man's power to make a crime by confession, unless he is in a state of Carcer. *Grim part 1 Tit. 16 s. 12 s. 2.* Such a crime may be proved by witness. It may be proved by presumption to 16 Feb. 1719 *William Ross* 12 April 1697 *Andrew Math* 2 June 1676 *Janet Spence* 23 February 1719 *Nicol Gordon* 10 July 1682 *William Minnie* 19 August 1691 *Master of Gar* 6 Oct. and others. 21 March 1694 *Benjamin Park* 6 February 1718 *Stuart Abercromby* 14 February 1725 *Archibald Walker* It is sufficient to the strengthening of his father and the witness him afterward into a deator to conceal the fact, was inferred from presumptions 6 February 1686 *Philip Mann* 1680. And it was found he was not to be convicted that one who killed his father from these presumptions, viz. he was born to keep the name of the house which he had from his father, and afterwards: and the father murdered by him