Coul. 1079. Nic. Boer. Decis. 323 n. ii. Again we find some
taking their estimate of the greatness of a wound from the
part of the Body hurt, or from the Largeness and depth of the
wound, or from the Nature of the Weapon that inflicted it, and
others from other Circumstances. There are also some who
leave it in Arbitrio Judicis to determine when a person
should be thought to have been Mortally wounded or to have
died of his wounds Prosp. Farin. ibid. n. 48 & seqq. And
so Much Uncertainty, it is the prevailing opinion, that the
Judge should Consult Expert Physicians or Chirurgeons
who saw the dead body and give Credit to their Report upon
oath of Fidelity, Vide Tot with the Reason of their Opin-
=ion Carpzov. Prim. part, qu. 26 n. 23 & seqq. Jurel. n. 38 & 84.
Jurisprud. Forens. Const. 22 def. 12 Jo. Voet Comm. ad Pand.
ad L. Cornel. de sicar. n. 4. Quia Peritis in arte sua Credi-
=dum quando Frant fallum de Credulitate. Two Physicians
should be called to give their opinion in such a case; but
the Testimony of one may be Relyed on in a place where
two cannot be had, Prosp. Farin. ibid. n. 151 & seqq. Nic.
Boer. ibid. 28. Jul. Matth. de Prim. Gil. de sicar. cap. 3 n. 13.
Carpzov. ibid. n. 35. Physicians and Chirurgeons have often
pleaded to be free of giving an oath in such a case
as if their oath de fideli administrationed their Opin-
=ion were sufficient to give Credit to all their after De-
clarations in Matters Relating to their Business. But
the Lords of Justiciary dont accept of the Declaration
of Physicians or Chirurgeons present, except they be
sworn Judicially upon the verity thereof 20 July 1627
Paterson contra Wardie. And Reject their Justificat. on
Oath upon foul and Confessed 3 November 1621 Wilson
=son contra Paton 15 December 1630 John & Gilbert Ker-
=nedies. If the Physicians or Chirurgeons be Clear, the
the wound was Mortal and occasioned the Person dea-
the Judge may Condemn the offender to dye, Carpzov. ibid.
n. 26. 44. But if they be in doubt whether the Wound
was Mortal or Not, he should inflict an Arbitrary
Punish-

=punishment only Carpzov. ibid. n. 26. 28. 44. Malius of an error
errard in Misericordia Remittendi, quam in favoritate
ulciscendi c. 12 causa 26 quæst. 1. Affectate Prudence not to be Under-
=stood to think that the Judgement of Physicians is to be form-
=plicitly Relied on in this Matter, as to Exclude the Journal
from the Benefit of proving the Contrary, Viz. that the
wound was not Mortal but that the wounded person died
ex Malo Regimine, or thro some other cause by the Counter
opinion of more Knowing Artists, Prosp. Farinacius ibid. n.
128 & seqq. Carpzov. ibid. n. 47. And Quæst. lib. 2 obser. 111
n. 16. Carpzov. Jurisprud. Forens. part 1 const. 26 def. 5.
Jo. Voet ibid. Nor is the opinion of Physicians or Chirur-
=geon to be Neglected or Regarded by the Judge, unless it
was formed from an Accurate Inspection of the dead body
and examining all the qualities and Circumstances
of the wound after Dissecting the place where it was
inflicted Carpzov. Prim. part 1 Qu. 26 n. 43. 49 & seqq.
having Judges are thus Arbitrary in so great a Concern
as a Man's life, and the quality of a wound cannot be
well Considered in General but only Relatively
Individuum with Respect to the particular person
wounded, for that some will by their Strength and health
of body bear out longer under the same wound than
others of a more Weakly and tender Constitution it
were to be Desired, that the Different Determinations
of Judges were fixed by some certain rule as to time, so
as a person surviving that time may be understood
not to have died of his wound. As by the Law of En-
=gland one is said to be Mortally Wounded, if he dies within
a Year and day after the Wound: but is Reputed to have died
a Natural death, and Not of his wound if he survive a year
and day, Cobo 3 Inst. 47. 53. Hale pl. Cr. 43. 53. Hawkins
pl. Cr. lib. 1 chap. 31 § 9. In the Computation whereof the
whole day on which the hurt was done is Reckoned the
first. When a person Mortally wounded dies, it is presumed
that he died of his wound: altho the Nature of the Wound