

infer. Had L. Cornwall do hear. C. l. c. 8. E. d. l. 9. 84. l. 111
 Had L. Aquil. which is agreeable to the Law on Law Casp. l. 1
 Tit. n. 51 & 52. But the Doctors of the Civil Law are divided
 in their opinions in this Matter. Some think that one guilty
 of Casual homicide ought no way to be punished: because
 the fact was done without any fault or design to kill. and
 will leave him to be liable to an arbitrary punishment
 or fine. It third for a Distinction whether the Casual
 homicide proceeded from any fault in the Committer or No
 asporting him to be liable to no pain or punishment if
 he was doing a Lawfull act, and punishable if he was
 about that which is Unlawfull. But this Distinction
 is out of the case for homicide committed in the doing
 an Unlawfull act is not casual, but a guilty homicide.

By the Law of England, casual homicide doth infer the
 forfeiture of goods and the the Grand Requise a pardon of comp.
 6 Edw. 1 cap. 9. & l. c. pl. fr. 32. Hist. phar. l. c. 1. p. 40. 477.

By the Law of Scotland, casual homicide is not punishable
 capitally. But as it was formerly Lawfull to the Criminal
 to go with advice of the Privy Council to be punished the King
 or to find him in his Murther to the use of the Privy Council
 Children or Heirs of the person ~~murdered~~ he had
 22 In. l. 1. p. 1. l. 2. So now when there is no Privy Council
 in Scotland that may be done by the Lords of Justiciary
 with their advice. For in the case of casual or No design
 or other favourable homicide for which Law inflict no
 corporal but only an arbitrary punishment by banishment
 or fining, there lies a Civil Action at the instance of
 the Heir of the slain of the Deceased (if they prosecute the
 Murther and no other way) against the slayer for payment
 of some Amends or Compensation in Money for
 loss they sustain by their friends death. Which is called
 by the Norman a Wergeld, or Wergelt from Ver i. e. Vir
 and golt silver Casp. l. 1. p. 1. l. 34 and by the
 Dutch loonpenning. The latter is the word used to the present
 of time of our killed. The English term Murther and

call it an affittment or Exoy Reg. Maj. lib. 1 cap. 24 & 36
 act 34 Parl. 6. 1. 1. Where several persons are guilty of the
 slaughter of one Man, each of them are liable to pay a whole
 affittment Casp. l. 1. p. 1. l. 34. For our part 4 Const. 11. doth
 that the first discharge of such affittment is bound by
 the letters of pardon, and by the Doctors of the Law to be
 paid because it becomes to the man slayer to be friend
 of the person killed. But no Wergeld or affittment is due
 to the Relations of a person killed, when the killer suffers
 death for his Crime Casp. l. 1. p. 1. l. 34. For our part 3 cap. 11. 87
 Act. Math. do. Enim lib. 48. Tit. 5. cap. 7. n. 12. in fine Casp. l. 1. p. 1. l. 34.
 For our part 1. q. ii. 34. n. 42. Defini. Casp. l. 1. p. 1. l. 34. l. 1. c. 1. p. 1. l. 34.
 7. In that Command. Tit. 1. ad L. Cornwall do hear. l. c. 1. p. 1. l. 34.
 Indicted for killing another by thrusting a sword through
 his belly; it was sustained to Etide the Libel being taken
 that the person killed was the occasion of his own death
 in so far as his servant while he the Master struck at the
 Dammil with a Baton, having grasped the pannels body
 and arm to fast, as he had no power or Command of his
 sword, the pannel held out his sword to keep off the Legged
 for, who being indrunk run himself upon the point of it
 and thereby Received the wound he died of a 3. 4. 1690. John
 Mcmillan. For casual homicide committed in Wrothling
 or any other play or diversion no punishment is due
 Pros. Farn. de homicidio qu. 126. n. 316. l. 1. p. 1. l. 34. It was found
 Relevant to Etide an Indictment of manslaughter by
 one Lord throwing down another, that he throw down
 was only a Wrothling for diversion out of no Murther or
 ill Design; and that previous thereto, the Deceased was
 Valotie many fiddly and in a habit of spitting blood
 23 January 1710. William Bathgate. 50 p. 1. l. 34. l. 1. p. 1. l. 34.
 or had antecedently paid to the Deceased for killing his servant, as in the
 Oct. 30

If No case may be laid upon a
 capacity, either with respect to private Interests, or
 publick Justice.

l. c. 1. p. 1. l. 34.