Accepted by the other; albeit the provoker when both ca[me]
to the field, was first Attacked with a drawn sword by th[e]
party provoked 17 June 1670 William McKie. Because th[e]
ones being put in hazard of his life by the first assau[lt]
is sufficient in other cases to Exculpate from fore thoug[ht]
felony; Yet it is no good plea where a Challenge preced[ed]
and the Challenger Versabatur in illicito by going to the
place of Encounter which he Needed not to have done.
And for the same Reason, when upon a Challenge given a[nd]
Accepted the parties fought; the Accepter of the Challe[nge]
is liable to the pain of duelling, albeit he when upon the
place Refused to fight till he was set upon and put in
hazard of his life by the other 4 August 1673 Robert-
son. Where one upon Receiving a Challenge to fig[ht]
Declares that he will be in such a place at such a time
and stand to his Defence if attacked by the provoker;
fighting following thereupon is Reputed a Duel,
Voet de Duellis cap. 33 nu. 1. McKenzie Crim. part. 1
1257. For in assigning time and place he in effect acc[epted]
the Challenge and gave the other an opportunity to Meet
him upon such a Design; and his Declining a formal [...]
to the Challenge, was only an affected Colour to Cheat [the]
law. But if a person who, in Answer to a Challenge given,
said that he would not transgress the law, but if assau[lted]
by the Provoker would Defend himself, do, when so a[ssaulted]
do, kill in his own Defence; he is not punishable as a
dueller McKenzie ibid. Because self defence was th[ought]
to be a good plea by the persons assaulted having pro-
mised to Defend himself, which law allowed him to
The law so far abhorrs all duelling in Cold blood,
that not only the Principal who Actually kills the other
but also his seconds [struck through: illegible]
are guilty of Murder whether they fought or Not Ha[le]
pl. Cr. 51 Hawkins pl. Cr. lib. 1 chap. 31 § 31. In Re-
spect of that Countenance which they give to their
principal in the Execution of his purpose by accom-

Accompanying him therein and being Ready to bear a part
with him. But it has been thought hard to hold the second
of the person killed equally guilty of his Murder, to whom
he was so far from Intending any mischief, that he was
Ready to hazard his own life in his quarrel. Again, even
those who carried the Chartel or Challenge, tho Not pre-
sent at the Conflict, are art and part of a duel. Because,
tho the carrying a Challenge be only **nudus** conatus, an
Incompleted act; Yet if death follow upon the Combat,
those who carried the Challenge are art and part of the
Murder Committed by their accomplices McKenzie ibid.
58. The father of him who had sent a Challenge to Ano-
ther, having Come to that others house and persuaded
him to go to the fields with him, where he was assaulted
by the Challenger, and having tripped up his heels as he
was standing to his Defence, whereby the person assaulted
having fallen to the ground was killed by the Challenger
as he lay there; the father was found art and part of
the Murder 14 June 1676 David Hamilton.

When a person is killed in a duel, the Inditement
may be founded both upon the laws against Murder and
the Act against duelling, or upon either. If founded
only upon the laws against Murder, the Exception of
self Defence is Receivable against it, as not Contrary
to any quality therein Needful to be proved, of which
Nature that of fore thought felony is not: But if foun-
ded upon the statute against duelling, the plea of
self Defence is not admitted against it, as being Con-
trary to the quality of a Challenge or provocation
given, which must be libelled and proved 17 June 1670
William McKie. Persons who came out of the house
with one of the duellers to the field, were Received
as witnesses. But Sir George McKenzie (Crim. part
1 Tit. 12 § 8 in fine) Conceives it Reasonable, that if
Many who Might hinder the Combat, tamely look
on