

after, were sustained relevant to infer only an ill
punishment, being found proved, without any evidence
of force brought Ma. lies against the party; the person
deceased with such presumed guilt; was fined in 20
Months whereof 2800 Months was awarded to be paid to the
Dow and Children of the Deceased, and 200 Months to the
Fid. 2 Apr. to 1670 Mr John Montgomery.

By the law of England the Crime of Mayhem in Error
Capital punishment is punished upon the Statute of 23 Jac.
2 cap. 1. But in order to fine and imprisonment and recover
of Damages is fixed at Common law by Indictment or Jus-
tice, whereon the wounding felonies may come out as Jus-
tice, the the Crime is not Capital but 3 Just. 108. Where
the Mayhem may occasion the parties death, whereas it
is called Homicidium prebationis. In which Appeal the
Plaintiff must appear in proper person and not by attor-
ney. An Attorney cannot be made: because the Defendant
hath Right by Law to Demand that the Juries may be
upon the part said to be hurt for proof. See Coke's Just.
313 In order to have it adjudged on such Writs whether
there be any any Mayhem or Not. And albeit there can
be but one Appeal of death against several persons
who Concur in killing a Man, for that a man can die
but once: yet where a person is maimed, one part of
his Body by one, and in another part by another, he
may have several Appeals of Mayhem against the
Respective offenders, Dalton de p. 16. c. 6. But an Ap-
peal of Mayhem is now seldom brought: the usual
way at this day for persons Maimed, being to pursue
Action of trespass for an assault of Battery and
Maiming &c. In which the Court may give the
Damages upon View of the Maim, and afterwards
of Expenses &c. Vid. 108.

In Scotland Mutilation and Disembowment are
at other Injuries taken away by transaction 14 June
1637

1637 John Forbes or by Arbitration 1 Feb. 1650 James Albon
and or John Baxter 14 June 1626 And contra Forbes 220
July 1627 Duncan Woods.

Mutilation and Disembowment may be judged by
the Law of Feudatory, or by bailies of Regality or Shire,
but not by Barons 10 July 1635 Glasgow contra Gilchrist
and Albon.

The Crime of Mutilation cannot be tried till Year
and day after Commission of 17 December 1623 John
& Thomas Hatties 16 January 1640 Hamilton & Bramond
& Thomas Hatties 16 January 1640 Hamilton & Bramond.
Because, the Member may by a Stroke received be dis-
abled or ^{lose} its use for a time, that is not Mutilation
which is a perpetual Disability, and time only can dis-
cover whether it is perpetual or temporary. Therefore
it is not admissible in a libel of Mutilation, to say the
fact to have been Committed upon one or other of the days
of such a Year as is usual in other Criminal libels, but to
libel the precise day or declare it at the Bar 10 January
1640 James Haggart & Bramond. If a Mutilation be libel-
led as Committed on one or other of the days of such a Year, the
writ or one or other of the Months of such a Year, the
trial cannot proceed till Year and day after the last day
of that Year, like a libel that is within time. But a trial
may be insisted in after Elapsing of that time. But a trial
for Disembowment may go on without waiting for the
Course of Year and day after the Crime 27 Feb. 1618
George Miln alias Wilfons Because no Recovery is Expose-
ted, unless the Doctor art of Salicostins for Restoring
Nose, Eare, Quad. Med. Leg. lib. 5 tit. 3 qu. 3 n. 164 &
Effectual, and extended to other parts of the Body. In
a process of Mutilation and Disembowment, Com-
menced within Year and day the pursuer may pass
from the Mutilation and first for the Disembowa-
ment 17 December 1623 John & Thomas Hatties. The
was put to the knowledge of an assize for Mutilation
= A.