

And it was much enforced by the defendant's counsel that it was a new cause of quarrel; and so the stroke is not upon any precedent malice, and therefore it is not murder. But all the Court severally delivered their opinions, that if one make a wry or distorted mouth or the like countenance upon another, and the other immediately pursues and kills him, it is murder, for it shall be presumed to be malice precedent; and that such a slight provocation was not sufficient ground or pretence for a quarrel, and so delivered the law to the jury that it was murder, although what the defendant pretended had been true.

Whereupon the jury going from the bar, notwithstanding the evidence was pregnant against the defendant, eight of them agreed to find him "Not guilty"; but the other four withstood them, and would not find it but to be murder. And on the next-day morning two of the four agreed with the eight to find him "Not guilty." And afterwards the other two consented in this manner, that they should bring in and offer their verdict "Not guilty," and if the Court disliked thereof, that then they all should change the verdict and find him "Guilty"; and upon this agreement they came to the bar, and the foreman pronounced the verdict that the defendant was "Not guilty." And the Court, much misliking thereof, being contrary to their direction, examined every one of them by the poll whether that was his verdict; and ten of the first part of the panel severally affirmed their verdict, that the defendant was "Not guilty," but the two last affirmed how they agreed and discovered the whole manner of their agreement. Whereupon they were sent back again, and returned and found the defendant "Guilty."