shooting the person mentioned received a mortal wound, but that by the use of "and" with such words as these, "whereby then and there," the narrative would be sufficiently precise. Dwarris did not mean to say that by the use of the words "feloniously and of malice aforethought" before the allegation of the kind of assault, the pleader was dispensed with the necessity of repeating them when he came to describe the murder. This is plain if we look at the authority in support of his dictum, which is taken from Heydon's case, 4 Rep., p. 41. There the objection was as to the non-repetition in the narrative; the words were repeated to qualify the murder.

At common law, then, it appears to be perfectly clear that such a count as that submitted is insufficient. We have then to examine if the insufficiency is covered by any statute. This brings us to the consideration of Sec. 79. The latter part, which is alone in question, is in these words: "and where the offence charged is created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they be disjunctively stated, or appear to include more than one offence, or otherwise." The verdict submitted to us will be quashed solely on the ground that the words of the statute have not been strictly followed. Of course, I concur in this, for I do not think the words of the statute have been followed. But I go further: I do not think there is any substantial difference between *Carr's* case* and *Deery's* case.† It seems to me that the legislature never intended to sever the words "feloniously and of malice aforethought" from the description of murder. See the first form of schedule 32 & 33 Vic., cap. 29. If not in laying the crime purely and simply, why should they be cut off in laying it as qualifying another offence? No possible reason can be given for such a pretention. It is said the words are of no meaning, the prisoner cannot be injured by their omission, the jury cannot be misled. They were in *Deery's* case, for they rejected the count for the same act which alleged the premeditated malice, and they rendered a verdict of guilty on the count on which the words did not appear. Again, we are not helped by Section 27 which gives a legal effect to the forms of schedule A. That schedule has no form applicable to the present case. The third form applies to no offence; and besides this, these forms are only a guide to other cases in matters not necessary to be proved. Surely premeditated malice must be proved in murder. I am therefore of opinion that the count is insufficient.

The following is the judgment of the Court:—

"The Court, etc.

"Considering that it appears by the Case Reserved for the consideration of this Court, that the said Wm. Bulmer was tried at the term of the Criminal Court held at the city of Montreal, in the month of September last past, on an indictment containing six counts, the first whereof, being the only one on which the jury empannelled for his trial found a verdict of guilty, was as follows:—"William Bulmer, on the 15th "day of August, in the year of our Lord 1881, at "the city of Montreal, in the district of Mon- "treal, a certain revolver then loaded with gun- "powder and divers leaden bullets, at and "against one Benjamin Plow, feloniously, wil- "fully and of his malice aforethought, did "shoot with intent thereby then the said Ben- "jamin Plow to kill and murder."

"Considering that the said first count on which the said William Bulmer was convicted is insufficient to warrant the verdict in this cause rendered on the said count or charge;

"It is considered and adjudged and finally determined by the Court now here, pursuant to the statute in that behalf, that the said William Bulmer ought not to have been convicted on said indictment, and his conviction is therefore quashed and set aside, and the Court doth order that an entry be made on the record in this cause, to the effect that in the judgment of this Court the said William Bulmer should not have been convicted."

Conviction quashed.

C. P. Davidson, Q. C., for the Crown.

W. A. Polette for the prisoner.

*26 L. C. J. 61.

†26 L. C. J. 129.