

it. 3. Where the homicide is committed in prevention of a forcible and atrocious crime; as, for instance, if a man attempt to rob or murder another, and be killed in the attempt, the slayer shall be acquitted and discharged. See Tract. 145; 1 Hale, 438; 24 & 25 Vict. c. 100, s. 7 (post, p. 713).

MANSLAUGHTER is the unlawful and felonious killing of another without any malice either express or implied. It is of two kinds; 1. Involuntary manslaughter; where a man, doing an unlawful act not amounting to felony, by accident kills another; or where a man, by culpable neglect of a duty imposed upon him, is the cause of the death of another. And it may be stated generally, that that which constitutes, being done by design and of malice prepense in the eye of the law, constitutes manslaughter when arising from culpable negligence. See *R. v Hughes* Dears. & E. 248; 25 L.J. (M.C.) 202 post, p. 594. 2. Voluntary manslaughter; where upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another, by some personal violence, etc., and other immediately kills him. Manslaughter is felony.

MURDER is thus defined or described by Lord Coke (3 Inst. 47); "Where a person of sound memory and discretion -- unlawfully killeth-- any reasonable creature in being--and under the King's peace--with malice aforethought, either express or implied."

Pages 575, 577, 578, 579.

4. And, lastly, the killing must be committed with malice aforethought. (See as to proof of intent, ante, pp. 225, 226, and *R. v Heesom*, 14 Cox, 40, Lush J.; and as to proof of malice and intent, ante, pp. 237, 238.). Malice is either express or implied. Express malice is when one, with sedate and deliberate mind, and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. 1 Hale 451. Neither shall he be guilty of a less crime, who kills another in consequence of such a wilful act as shows