

here merely the rule laid down by Lord Hale (ante p. 262) never to convict a man of murder or manslaughter on circumstantial evidence alone, unless the body have been found. 2 Hale 290. See R v Hopkins 3 C.&P. 591.

In cases of implied malice (see post p. 582) the homicide is usually committed in the presence of others, who may prove it; if not, it must be proved by circumstantial evidence.

It must also be shown that the deceased died of the wound or other injury given him by the defendant, within a year and day after he received it; for if he died after that time the law would presume that his death had proceeded from some other cause 1 Hawk c.23 s.90.

But now, by the enactment above mentioned, it is not necessary to set forth the manner or means of death, but it is sufficient ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ in an indictment for murder, to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased; and in an indictment for manslaughter, to charge that he ~~did~~ feloniously kill and slay the deceased.

EVIDENCE FOR THE DEFENDANT;- The defendant has to prove, either that the murder was not committed by him, or that the offence actually committed does not amount to murder. The defence may be, and frequently is, made out by the examination in chief of the witnesses for the prosecution; but if not, it may be proved from their cross-examination or by witnesses called upon the part of the defendant.

We have seen (ante p. 575) that the prosecutor is not bound to prove that the homicide was committed from malice premeditated; if he prove the homicide merely, the law from thence presumes the malice. The malice in such a case, however, is only presumed; and the defendant may rebut that presumption, by proving that the homicide was justifiable, or excusable or that at most it amounted to manslaughter only, and not to murder.

JUSTIFIABLE HOMICIDE is of three kinds; 1. Where the proper officer executes a criminal in strict conformity with his sentence. 2. Where an officer of justice, or other person ~~whomsoever~~ acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing