

is taken on either side, and one of the parties is killed, it is manslaughter only

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But if one of the parties provides himself with a deadly weapon beforehand, which he uses in the course of the combat, & kills his adversary, this will be murder, though it would be manslaughter only if in the heat of the combat he snatched up a weapon, or had it in his hand at the commencement of the combat but without the intention of using it

J. H.!

Defendant, then to establish the fact of murder - the Govt must prove from all the facts which constitute it that "Malice aforethought" is one of the facts to be established of the Govt? - & therefore deft will insist upon the following propositions

1. That the burden of proof is on the Govt to prove all the material allegations in the Indictment, & if on the whole evidence the Jury have a reasonable doubt whether the deft is guilty of the crime charged against him they are bound to acquit.
2. That the question whether the crime is murder or manslaughter is to be decided upon the whole evidence and not upon any presumption of law from the mere act of killing.
3. That if there be any such presumption it is