

47. 1. Chitty on Ev. 26. Passions may be contained in a knowledge of human character, & of the notions & feelings by which the mind is usually affected. Experience & observation show, that the conduct of mankind is governed by general laws, which operate under similar circumstances with almost as much regularity as the mechanical laws of nature. Theology

Now this imputation of malice being thus completely repelled, as the burden of proof being on the Gov to prove malice - (as even if the burden of proof be on the Def to show Explanatory circumstances) - the following considerations tend to disprove "malice aforethought"

1. As the homicide was secret & that it is so occurred when no persons were present, & therefore the particular facts attending it cannot be proved & the manner in which it occurred is to be judged of by probabilities merely.

When this evidence shows nothing of the manner -

Dr Lewis as to the supposed stabbing of John Toulton used a stick in removing him from the body &c

2. The fair construction of probability that manslaughter is more common of recent than murder

3. The probability of manslaughter rather than

murder arising from the whole evidence in relation to the parties; & the occasion of their meeting, as follows

1. They had a real business transaction with each other, & engaged himself next in relation to it - that is Dr P certainly went to the college for the purpose

2. Their personal relations - friendly - yet somewhat excited about their second transactions