22 January 1663 Yooman contra Elephant. Nisi dolo Co
vicion of parricide by Verdict of an Assize work Disinh
riting with Respect to Degrees of affinity as to father
or Mother in law, Sons and daughters in law McKenzie ibi
§3. Because if Criminal laws should not be Extended 2d
The statute Discharging fathers brothers or sons to
Judge in the cases of those Relations Act 212 Parl. 14
J. 6 was not Extended to the same Degrees of affinit
till a law was made for that effect Act 13 Parl. 3 Ch. 2. Su
such Extension be been more favourable since of the
Relations here mentioned cannot in propriety of Speech
be applied to those in affinity: for we say not grand
father or grandmother in law. Sir George McKenzie Cam
part 1 Tit. 14 §5) Thinks, that abettors may be Convicted
of parricide, in order to Disinheriting and Debarring the
offender and his Descendants from succeeding to the person
killed, of the Extinction of the Effects bear that penal
Incapacity: because that seems to be only a Civil effect
and doth not fix the Crime upon him.

The punishment of Assassination is not the same in
all places. In Saxony he who hires the Murderer is liable
to the pain of death and his dead carcass denyed Christian
burial: and the Mercenary is broke upon the Wheel
Carpzov. Crim. part 1 quest. 19 n. 15. In some places as
hands are drawn at a horse tail and in other places they
are cut in pieces Prosp. Farinac. Homicid. qu. 123 n. 2
Jul. Clar. sententiae lib. 5 §5 assassinium n. 4. By our
law, not only all assassinds, but all who assert that it
is lawful to Kill any Man upon Difference in opinion
or be cause he hath been employed in the service of the
King or of the Church established by law Incurs
the pain of treason Act 15 Parl. 3 Ch. 2. being assassi
nation is a Crime of a high Nature Inconsistent with human
Society. But now this
punishable only as a Capital Crime ang. 7 Act. Car
2 1 S7.

Murder

Murder under trust (called by the Civilians proditio if
being treachery in a proper sense) is more severely punished
than ordinary Murder. Thus when a Man did administer
poison to his wife with which he was furnished by a Doctor,
and tho by the Common Report of the Country having languished
and died thereby; both the husband and the Doctor were Con
demned to be hanged, and thereafter to have their heads
cut off and affixed upon a Conspicuous place in the Town
where the Crime was Committed 17 March 1692 David Hay
and John Thomson. This kind of Murder was formerly treason
and punishable as such by the law of Scotland after trial
taken and Conviction by an assize act 51 Parl. 11 J. 6. The not
upon the offenders being Declared fugitive for not appearing
to Vindicate the law, as was Decreed by the Lords of Session 22 Ja
nuary 1663 Yooman contra Elephant. It is a Received tra
dition, that this Crime was Made treason upon McDonald's
killing the Laird of McLean who came to his house with his
assurance of protection given not withstanding of the feu
ding and Enmity between them McKenzie Cam. part 1 Tit. 14
§2 in fine. But now Murder under trust is no longer treason,
and is punishable only as a Capital Crime 7 Ang. cap. 21 S7.
By the law of England a servant who kills his Master or
a wife who Murders her husband is guilty of Petit treason
1. 3 Treason of a lesser or lower kind.
2. Petit treason is killing of a master or Husband, or more properly treason in petit.
3. Petit treason is when a servant or a wife kills his master or husband. Hale's Hist. Pleas of the Crown part. 378.
25 Edw. 3 Stat. 5 cap. 2 A. Petit treason is when a servant or a wife kills their master or husband, or when a man kills his wife, or when a man or woman kills a prelate or person in orders, or a man or woman kills a person in the case of sanctuary, or a man or woman robbers and murdering robbers and murderers ought to be punished.

By the Civil law Latrones or Murdering Robbers were
only hanged upon a Gibbet and suffered to hang there till
their body Consumed L. 28 §15 de poenis. In Germany as pre
ally in Saxony they did upon the Wheel Carpzov. Crim part
1 Qu. 22 n. 8. The Reason why Murdering Robbers are very
severely Exemplarly punished, is because they are guilty of
a double Crime. It's true their Main design is Murder but
upon Money or goods than the owners life, and they never
attack poor Men or Beggars. Which occasioned that of
the Satyrist, Cantabit vacuus coram latrone Viator. Hence
Antiochus when he found himself like to fall into
the hands of Pirates, threw his gold into the sea with this
Expression; it is better that should perish for Antiochus