

meanings, but in its legal sense, the only sense in which we are to consider it, signifies an evil design in general, a wicked and corrupt motive, an intention to do evil. Blackstone, in his Commentaries, says, "That it is the dictate of a wicked, depraved and malignant heart." Russell in his "Treatise on Crimes" (vol. 2, p. 482) says, "It is not to be understood merely in the sense of a principle of malevolence to particulars, but as meaning that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit; a heart regardless of social duty and deliberately bent on mischief. And in general any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditation, hatred or revenge against the person killed; but also in many other cases, such killing as is accompanied with circumstances that show the heart to be perversely wicked, is adjudged to be of malice prepense, and consequently murder." Wharton in his Law of Homicide says, "Malice in its legal sense denotes a wrongful act done intentionally or without just cause and excuse." Chief Justice Shaw of Massachusetts says, "Malice although in its popular sense means hatred, ill-will, or hostility to another, yet in its legal sense has a very different meaning and characterizes all acts done with an evil disposition and a wrong and unlawful motive or purpose, the wilful doing of an injurious act without lawful excuse."

It will thus be seen that law writers and jurists agree as to the meaning of the word malice, though they use different language to express the same idea. The definition by Wharton is brief and readily understood and signifies every intentional wrongful act for which no just cause or excuse can be given. Malice may be either express or implied; express, when the act is done with a sedate, deliberate mind and formed design. Deliberation and premeditation denote in themselves malice. Implied malice will be better understood by a few examples laid down in the books. Thus, if one kills an officer of justice in the execution of his duty, or any of his assistants endeavoring to conserve the peace, or any pri-