

And yet for Petty Larcenies, and small Felonies, the Offenders may be tryed at the Quarter-Sessions, and the Examinations and Informations may be certified thither; and the Informers bound thither. See hereof, *antea*, *iii. Fel. & 3 H. 7. cap. 3. & Fitz. 251. f.*

The form of the Recognizance, See *postea tit. Recognizance.*

The form of the *Mittimus*, See *postea tit. Mittimus.*

The form of the Bailment, See *postea tit. Bailments.*

If the Offender, upon his Examination before the Justice of Peace, shall confess the matter, it shall not be amiss that the Offender subscribe his Name or Mark, under such Confession made by him. *Confession*

If the Offender confesseth the Felony before the Justice of Peace, and notwithstanding he letteth him go, without committing or bailing of him; this seemeth to be a voluntary Escape, and so Felony in the Justice, *Cromp. 39; 44.*

Also, if any Person shall be brought before a Justice of Peace, and charged with any manner of Homicide, (other than that which shall be done in the orderly execution of Judgment) as it were done *Se Defendendo*, or by casualty, (which are not Felonies of Death) or done by an Infant, a Lunatick, or the like; yet it is the Justices part, and safest for him, to commit the Offender to prison, or at least to joyn with some other in the Bailment of him, (if the Cause will suffer it) to the end the party may be discharged by a lawful Trial, See *antea tit. Homicide.* *Bailment*

The like is to be done where any Felony is committed, and one brought before the Justice of Peace upon suspicion thereof; though it shall appear to the Justice, that the Prisoner is not guilty thereof: For it is not fit that a Man once arrested and charged with Felony (or suspicion thereof) should be delivered upon any Mans discretion, without farther Trial; *Vide Cromp. 34. Lamb. 229.*

The Justices of Peace have authority (by the words of the Statute) to bind by Recognizance, all such as do declare any thing material to prove the Felony, to give Evidence against the Offender: And yet the Wife is not to be bound to give Evidence, nor to be examined against her Husband; for, by the Laws of God, and of this Land, she ought not to discover his Counsel, or his Offence, in case of Theft, (or other Felony, as it seemeth,) See *Stamf. 26. b.* Nay, I have known the Judge of Assize greatly to disallow, that the Wife should be examined, or bound to give in any Evidence against others in the case of Theft, wherein her Husband was a party; and yet her Evidence was pregnant and material to have proved the Felony against others that were parties to the same Felony, and not directly against the Husband, See *antea tit. Accessary.* *§. 2. Evidence by the wife*

And Sir *Edm. Coke*, l. 6. b. saith, That it hath been resolved by the Justices, *Termino Pasch. 10 Jac.* that the Wife cannot be produced either against or for her Husband, *Quia sunt due anime in Carne una.*

And yet it was resolved by the Judges (in the case of the Lord A.) that in Criminal Causes the Wife may be a Witness against her Husband, especially where she is the party grieved. But that in Civil Causes she cannot, *7 Caroli Regi.*

But in the Lord *Audleys* Case, the Lord *Audley* had procured one to Ravish his Lady, and was assisting to it himself; and it was resolved, That the Wife might in that case be a Witness against her Husband: But the reason of that case, will not hold in other Cases of Felony, for there she was *pars lesa*, and the Case was capable of no other proof.

But

11. 58.
mf. 138
85. b.
L. 390.

& 3 Ph.
Ma. 13.
Jult.
8.

1 & 2 Ph.
& M. 13.

& 2 Ph.
M. 13.
Jult.
27.