

de familia qui tunc interfuerunt, pœnam capitalem subibunt; nisi forte per patriam fuerint liberati.

ScamL. 97.  
& 179.  
Co. L. 6.

Sunt etiam quedam presumptiones ita violentæ, ut probationem non admittunt in contrarium; ut si quis cum cultello cruentato captus sit super mortuum, vel fugiendo a mortuo, vel mortem confitetur: quibus casibus non admittitur mortem deducere; nec alia opus est probatione.

Sir Ed. Coke; l. 6. maketh three sorts of Presumption: viz:

1. *Violenta*, (as in this last former case) which he saith is plena probatio. §. 3. Presump- tion.
2. *Probabilis*, which (saith he) moveth little.
3. *Presumptio levis; seu temeraria*, which moveth not at all.

And yet in cases of felony, &c. the Confession of the Offender, upon his Examination before the Justice of Peace, shall be no Conviction of the Offender, except he shall after \* confess the same again; upon his Trial or Arraignment, or be found guilty by Verdict of twelve Men; &c.

\* Co. 11.  
302. vide.

To the like purpose also is the Rule of the Civil Law, *Si quis in Judicio Confession- sponte de seipso confiteatur, & postea maneat in Confessione, satis est*: If any Man in Judgment do confess of himself, of his own accord, and doth persevere in his Confession, it is enough, and such Confession shall be taken for an Evidence of the Crime.

But yet at Lent Assizes at Cambridge, Anno quarto Caroli Regis, before Sir Francis Harvey, upon the Arraignment of a Prisoner for felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the felony, was only given in Evidence, no other Evidence then coming in upon his Trial; and the Prisoner upon that his own Confession before the Justice of Peace was found guilty by the Jury of Life and Death, and had Judgment, &c.

Also in cases of secret Murthers, and in cases of Poysoning, Witchcraft, and the like secret Offences, where open and evident Proofs are seldom to be had, there (it seemeth) half proofs or probable presumptions are to be allowed, and are good causes of suspition, and are sufficient for the Justice of Peace to commit the party so suspected.

8 E. 4. 4.  
5 H. 7. 4.  
Er. F. Imp.  
4 10.

But note, (by the Common Law) That in an Action of False Imprisonment brought against the Constable (or other Person that shall arrest another upon suspition of felony) it is no Plea for them to say, that the Plaintiff was suspected of felony: but they must alledge, That there was such a felony committed, and that the Plaintiff was suspected for the same: for suspition only, without a felony committed, is no cause to arrest another. Yet see the Statute of 5 E. 3. cap. 14. 'that if any Man have any evil suspition of any Person for felony, &c. be it by day or night, they shall be incontinently arrested by the Constables of the Towns, &c. and kept in Prison till they be delivered by the Justices, &c. Hic cap. 129.

17 E. 4. 5.  
22 H. 7. 29

Also the Defendant must alledge some special matter (in Fact) to prove that he, who was arrested, was suspected of felony, (as to say, that the party arrested is a Man of an evil Fame, or a vagrant Person, &c.) otherwise one

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