days wherein to reduce the evidence, &c., to writing, whereas under this Statute it is to be done at once. There is a difficulty in the concluding part of the 4th section, for a felon might be taken and examined by a magistrate in a county where the offence was not committed, and so if the offence were committed on the high seas. The justices have then, of necessity, to certify in the county where the felon was indicted, 2 Hale P. C. 285; 2 Russ. on Crimes, 872; 1 Chit. Cr. L. 94. The Statutes are not usually practised under here, so far as respects the taking and return of depositions, &c., though instances of its use have occurred, see Kilty's Rep. 234.[1] Yet the object of the enactments was to enable the Court to see whether the prisoner had been properly admitted to bail, and whether the witnesses are consistent or contradictory in the evidence they give, 2 Stark. Ev. 276. To which it may be added, that an object may also have been to inform the prisoner of what he is to answer at his trial, see R. v. Grady, 7 C. & P. 650; for the Courts have a general authority to order a copy of the depositions to be given to the prisoner, R. v. Greenacre, 8 C. & P. 32.

As the examination is to be taken before any disposition of the prisoner's case is made, the justice has power to recommit him for examination for a reasonable time, which the law adjudges to be three days, Davis v. Capper, 10 B. & C. 29. And a prisoner, when examined before magistrates on a charge of felony, is not entitled to have an advocate present on his behalf, it being a preliminary investigation and not conclusive upon him, Cox v. Coleridge, 1 B. & C. 37.[2] But in case of an inquisition by a coroner, a party has, it seems, a right to attend by counsel, Barclee's case, 2 Sid. 101.

The Statutes do not prescribe that the depositions shall be taken under oath, but the construction of them has always been so, it being incidental to the office of justice to take evidence in that way. They have also been
372 construed not to extend to *treason, Fost. 337, or misdemeanors, it having been expressly adjudged that they cannot be extended beyond felony, R. v. Paine, 1 Salk. 281; S. C. 1 Ld. Raym. 729, where depositions taken on an information for libel were offered, the witness being dead, but were refused. The authorities collected in the note to this case of the editor of the 6th edition of Salkeld show, however, that, in felonies, such depositions taken before a justice or coroner are admissible if the witness be dead or unable to travel, and see the note of the reporter to R. v. Smith, 2 Stark. 208; and depositions of a witness kept out of the way by the prisoner stand on the some ground, R. v. Guttridges, 9 C. & P. 471; R. v. Scaife, 17 Q. B. 238. Mr. Starkie, 2 Stark. Ev. 276, doubts the admissibility of such depositions if the witness be only sick or unable to travel, and this doubt was approved in R. v. Savage, 5 C. & P. 143, the proper course being to postpone the trial in cases where there is a probability that the witness may recover and attend, as a woman about to be confined. The case of

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[1] See Bram v. U. S., 168 U. S. 532, 549, for a discussion of the practice under these Statutes.

[2] Compare the preliminary investigation of a magistrate under our present practice. McBee v. Fulton, 47 Md. 425.