

of felony, who is in his own house or in the house of another person, and after notice of the warrant and request to open the door, it is refused or neglected to be done, the officer may break open the door to take him, Hals Ibid. pag. 116, 117. And where a warrant is issued against a felon, or one suspected of felony, tho' he be no felon, and either before arrest or after, he flies and defends himself with slings or other weapons, so that the officer must give over his pursuit, or otherwise cannot take him without killing him, if he kill him, it is no felony: For the officer or minister ought to pursue his warrant, or otherwise he is punishable, and the party by his flight and resistance is accessory to his own death. But then he must be a lawful officer, or there must be a hue and cry, or there must be a lawful warrant; and the party ought to have lawful notice of the reason of the pursuit, namely because a warrant is against him for felony. Hals Ibid. pag. 118. When the officer or minister hath made his arrest, he is forthwith to bring the party to the gaol or to the Justice according to the Import of the warrant, or otherwise secure him till he can reasonably be brought, Hals Ibid. pag. 119.

When a person thus arrested of felony is brought to the Justice of peace, he is to take the Informations upon oath of the prosecutor and witnesses and put them into writing, and to take the Examination of the person accused in writing without oath, 1 & 2 ph. & m. cap. 13. 2 & 3 ph. & m. cap. 10. It is fit to take a recognizance from the prosecutor to appear & present a Bill of Indictment, and also of the witnesses to appear and give Evidence at the next Sessions of the peace or Gaol delivery, as the case shall require, if he shall find cause to commit or Bail the prisoner; otherwise he shall discharge him. If a prisoner be brought before a Justice of peace expressly charged with felony by the oath of a party, the Justice cannot discharge him, but must bail or commit him. But if he be charged with suspicion only of felony, and there be no proof of felony committed, or if the fact charged as felony be in truth no felony in point of Law, the Justice of peace may discharge him, Hals Ibid. page 121. The commitment or Imprisonment of a party brought before a Justice of peace for felony or suspicion thereof must be by a writing under the Seal of the Justice, which is termed a Mittimus. Tho' the prisoner be bailable, the Justice is not bound to demand Bail, but the prisoner is bound to tender it, otherwise the Justice may commit him, Hals Ibid. pag. 120, 121, 122, 123.