

house, which were successively provided for by the English statutes. How far that act will go to the repeal of the former acts of assembly on the subject, it is not necessary to enquire; but considering the apparent intention of the legislature in passing the act of 1809, it is not deemed proper that this statute, or any other taking away the benefit of clergy from the offence of larceny from the house, or house breaking should be incorporated with our laws, even if it should appear that they are not all virtually repealed by that act.

As to the 3d class, highway robbery, there are in the provincial records several cases of indictments for that offence, which appear clearly to have been under this statute connected with 23 Hen. 8, Ch. 1. There was no act of assembly for the punishment of this crime; but the act of 1715, Ch. 26, which empowered the county courts to hold plea of thieving and stealing goods, &c. excepted robbery, burglary and house breaking.

The 6th section of the act of 1809, provides for the punishment of this offence, so that it is brought within the remarks made as to house breaking. As to the 4th class, stealing horses, geldings or mares, (which by 2 and 3 Edw. 6, Ch. 33, was extended to stealing *one* horse, &c.) the like observations may be made respecting the convictions for that offence under these statutes, before the act of assembly of 1744, and it is likewise provided for by the act of 1809, Ch. 138, S. 6. The 5th class, I have found no instance of any prosecution for.

It is further to be observed as to this statute, that the 13th section declared that wilful killing by poisoning, should be adjudged murder; the effect of which was only to repeal the statute, 22 Hen. 8, Ch. 9, by which it had been made treason, and punishable by boiling to death; but supposing this section to have been necessary and in force in the province, it is not necessary or proper that it should be continued.

As to the 22d section respecting *two* witnesses, see the note on 25 Edw. 3, St. 5, Ch. 2.



2 and 3 Edw. 6.—A. D. 1548.

CHAP. 23. The repeal of an act made in the 32d year of king Henry the eighth, which was made, that marriage contracted in the face of the church, and consummate with bodily knowledge, to be deemed lawful, any former contract notwithstanding.

See the note on 32 Hen. 8, Ch. 38.

CHAP. 24. An act for trials of murders and felonies committed in several counties.

There is reason to believe that this statute extended to the province, although no cases have been found to shew that recourse was had to it, nor would the circumstances appear on the face of the indictments in the provincial court, though in trials in the counties under commissions of *oyer* and *terminer* it might have appeared; as in England, although the party is indictable in the county where the death happened, the stroke is to be alleged in the county where it was given.

It is to be observed also, that in the act of 1789, Ch. 22, the doubt expressed in the preamble, was as to counties on the separate shores, which cases were provided for, as also those of a mortal stroke on the water, and death on the land, and *vice versa*. And it is fairly to be presumed that this case would have been provided for, if it had been thought doubtful.