

1 James 1.—A. D. 1604.

CHAP. 4. An act for the due execution of the statutes against jesuits, seminary-priests, recusants, &c.

See the note on 3 James 1, Ch. 4. This act was not declared in force by the act of 1706, Ch. 8, but it provided for the execution of several statutes that were so.

CHAP. 8. An act to take away the benefit of clergy for some kind of manslaughter.

For the occasion of making this statute, which took away the benefit of clergy, for the offence of mortally stabbing another, though done upon sudden provocation, see 4 Bl. Com. 193, by which it appears also, how favourably, in behalf of the subject, it had been construed in England. It is somewhat surprising therefore, that it should have been at all introduced in the province; but I find an indictment in 1744, against J. B. for that on J. C. in the peace, &c. (the said J. C. not having any weapon drawn, nor having first stricken the said J. B.) the said J. B. did feloniously make an assault, and that the said J. B. with a certain knife, him the said J. C. (the said J. C. as before stated then and there not having any weapon drawn, &c.) feloniously then and there, upon the left side of the breast of the said J. C. did stab and thrust, giving to the said J. C. with the said knife one deadly wound, of which he languished, &c. and died, and so murdered, against the peace, and contrary to the form of the statute. The prisoner was found guilty, and sentenced to be hanged. No other case has been found; and independent of the provisions of the act of 1809, it would not be deemed proper that this statutes should be incorporated, &c.

CHAP. 11. An act to restrain all persons from marriage until their former wives and former husbands be dead.

This statute (with several others) was declared to be in force in the province, by the act of 1706, Ch. 8; but it had long before been practised under, as appears from several cases in the provincial records, beginning with the year 1682. The declaration in the act of 1706, "that these several acts of parliament shall be, and are in full force within the province," is likely to create an erroneous impression, not only as to this statute, but as to others which have not such a declaration to rest on, but which have been adopted without it. The following proceedings from the Upper House journal, in April 1706, will shew the grounds of the act. Message to the Lower House: "Some persons having been presented by the provincial and Anne Arundel county courts, for bigamy, and for suffering a quaker conventicle to be kept in their house. The justices and officers of these courts are at a stand in the prosecution of the laws of England, providing against those offences, seeming to them to be wholly restrained to her majesty's subjects, residing within the kingdom of England. Wherefore it is recommended to the consideration of this general assembly, either to declare those laws of England reach hither, (for the better satisfaction of the several courts of justice,) otherwise by some good wholesome laws to restrain the said offences." Answer: "Your honors' message this day lay under debate and consideration of the house, and upon reading of the first branch thereof, relating to bigamy, this house hath resolved that a bill be brought in, declaring the act of parliament of England, against bigamy, has been, and still is in force in this province; and as to the other branch, relating to quakers conventicles, &c. This house are of opinion that the act for religion has sufficiently provided, that they are punishable according to the act of parliament in that case." Bigamy is now punishable by the act of 1809, Ch. 138, S. 7.