force as parts of one system, as far as the former remain unaltered by the latter; yet, considering the total disconnection of the governments, and the propriety of resting our rights upon our own charters, which there is a constitutional way of new moddeling at pleasure, it does not appear proper that any part of this charter, or of the other statutes (which will be hereafter noticed) should, where the subject is embraced by our own declaration of rights, be introduced and incorporated into the body of our laws.

But the grant in the first part of this chapter, to wit: that the church of England should be free, and should have all her whole rights inviolable, would, independent of the reasons given above, be improper to be so introduced and incorporated, because, under our government, no one christian sect is superior to another, so as to form what used to be termed "the established religion;" and the 33d article of the declaration of rights provides, that as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons professing the christian religion are equally entitled to protection in their religious liberty.

Chap. 17. Holding pleas of the crown.

Although the proprietor had by his charter, the power to establish courts of justice, yet as sheriffs and coroners were appointed with reference to the powers of such officers in England, it may be said that this chapter, as tending to restrain those persons, was in force in the province; and it appears also, by the case of Colebrook and Elliot, in 3d Burrows p. 1860, that it extended to the abridgement of the powers of courts leet, of which there were some held in the province; but if so, it is not necessary to be incorporated with our laws.

Chap. 28. Wager of law shall not be without witness.

It is stated by Blackstone, that wager of law is out of use, but that it is not out of force, for which reason, when a statute inflicts a new penalty, and gives an action of debt, it is usual to add, "in which no wager of law shall be allowed." Those expressions will be found in many of our acts of assembly, and those passed at the first settlement of the province will shew that it was considered in use. An explanation of this chapter of Magna Charta is given in 3 Bl. Com. 344, and in Salkeild, 683, the privilege being on the plaintiff's side as well as the defendant's, which he might have claimed from his declaration, without producing any witnesses of his demand, before this statute.

Among the thirty-six laws read, but not passed in 1638, there was one for the recovery of debts. This act made the oath of the plaintiff, of the truth of his book account, &c. evidence, and declared that the defendant should or might be admitted to wage his law in such manner as the court should appoint.

By the act ordaining some things touching the trial and judging of causes, (1642, Ch. 11.) the defendant in any cause civil or criminal, might put himself for trial upon the judge or court, or upon his country, and might wage his law in cases allowable by the law of England; and it was also declared therein, that waging of law against an account book, should be admitted according to the sound discretion of the judge. At present, inasmuch as actions of debt on simple contracts have been succeeded by actions of trespass on the case, and actions of detinue are not often used, (although they have sometimes been brought since the revolution) and the waging of law is totally disused, it does not appear necessary or proper, that this provision of Magna Charta respecting it should be incorporated with our laws.