The statute of Westminster 2, 13 *Edw.* 1, *Stat.* 1.—*A. D.* 1285.

CHAP. 12. The appellant being acquitted, the appellor and abettors shall be punished.—There shall be no essoin for the appellor.

See the note on 9 Hen. 3, Ch. 34, and 1 Com. Dig. title Appeal G. 14.

CHAP. 18. He that recovereth debt may sue execution by *fieri facias*, or *elegit*. (Part.)

See 3 Bl. Com. 418. There is no doubt of this statute having been considered applicable to the people of the province, as it related to the writ of *elegit*. In the records, there are a number of cases of execution by *elegit*, from the year 1672, until a short period after the passage of the statute 5 Geo. 2, Ch. 7, (in 1732,) by which, lands, &c. were made subject to be seized and sold in the same manner as personal estates, which probably occasioned the disuse of this remedy; of course it is not thought proper that this part of the statute should be incorporated, &c.

As to the last part, see the judgment of the late general court in the case of Whittington and Polk, stating that they knew of no instance in the state, in which the tenant, by *elegit* had brought the writ of assize of *novel disseisin* to recover his possession.

It is to be observed also, that the act of 1716, Ch. 16, (since repealed in 1803,) by which the goods on *fieri facias* were to be delivered at a valuation, was in some degree taken from this statute.

The statute of Geo. 2, will be hereafter noticed.

This statute is mentioned in the letter from S. Chase, which has been referred to.

CHAP. 19. The ordinary chargeable to pay debts as executors.

See 2 Inst. 397 as to this statute, which was in affirmance of the common law, and may be said to have been applicable to the province in respect to its general provisions. See also the Deputy Commissary's Guide, p. 1 and 2, as to this statute, and 31 Edw. 3, Ch. 11. The subject however, was taken up very early in the settlement of the province. In the first list of bills mentioned in Bacon's edition, there is one for the succession to the goods of the deceased intestate, and one for probate of wills, and among the thirty-six bills read in the assembly in 1638, there was one for succession to goods, which contained regulations concerning distribution, guardians, &c. In 1641, there was an act for causes testamentary, which directed that the Lt. General should exercise all temporal jurisdiction, to testamentary causes appertaining, according to the law of the province, and in defect thereof, according to the law or laudable usage of England, and where the same was uncertain, according to equity and good conscience. And in 1642, an act touching causes testamentary, which related to wills and the order of payment of debts. Several other acts were afterwards passed, the provisions of which were comprised in the act of 1715, Ch. 39, to which there were several supplements, the last of which was in 1758. The system which had been thus established, was altered in February 1777, by the creation of orphan courts, and by several supplementary acts.

A new system has since been established by the testamentary law, passed in 1798. That law declared that every provision, rule or regulation contained in any act of assembly before passed, or in any English statute introduced, used or practised under in this state, which was inconsistent with, or repugnant to any thing contained in that act, should be repealed and rendered void.

Under this mode of repeal, it is possible that many of the English statutes might remain in force, but the resolution of the last session, requiring a report of such parts of the statutes as may be proper to be incorporated with the statute law of this state, other circumstances are to be considered besides that of their being unrepealed. And the act of 1798, declaring in the 3d section, that the rules,