

orders and regulations then following, shall be taken as the law of the land, and those rules, &c. comprehending every necessary direction, it is not thought proper that this statute or perhaps any other on the subject, should be so incorporated.

CHAP. 23. Executors may have a writ of acco^mpt.

The action of account which at common law lay only between the parties, was given to executors by this statute, and further extended by others that will be noticed.

From the frequency of these actions in the province, it is to be inferred that this statute was in force; but considering the general powers given to executors by the testamentary law, (Ch. 8, S. 5,) it does not appear necessary that it should be continued or incorporated with our laws.

CHAP. 29. To whom only the writ of trespass of oyer and terminer shall be granted.—In what case the writ *de odio et atia* is granted.

See 4 Com. Dig. title Justices, (G. 1.) 2 Inst. 419, and 6 Com. Dig. title Prerogative, (D. 28 and 29.) See also the seventh section of the charter, as to the power of constituting courts of justice. It appears by the council proceedings, that in 1696, a special commission was prayed for to try a ship seized for bringing in goods contrary to a late act of parliament, on which, separate reports were made by the gentlemen of the law who were applied to, as follows: "I have read and perused the statute of West. 2, and lord Coke's commentaries thereon, and I am of opinion that a commission of oyer and terminer cannot issue—R. G." "Upon consideration of the statute and comment aforesaid, and the constant practice and constitution of this province consonant to the laws of England, I am of opinion that such a commission as is prayed, may be granted and executed in the province—W. D." A similar opinion given by G. P.

In 1669, the following petition was sent by the house of delegates to the governor: "It being represented that there are two persons confined in gaol for murder; and whereas there are several justices of the provincial court, and the attorney-general in town, whereby the said criminals may be tried, &c. this house humbly prays that your excellency will be pleased to grant a commission of oyer and terminer, for the trying, hearing and determining the criminals aforesaid during the session," which was assented to. Several other instances of commissions of oyer and terminer occurred before the revolution. In February 1777, an act passed, to enable the governor to grant such commissions in certain cases, which power was to exist only during the war. And an act with the same title in November 1783, which expired in 1785. And in May 1781, an act was passed to ascertain the allowance of officers in any court of oyer and terminer and gaol delivery. In November 1787, an act passed declaring that the governor should have power to issue such commissions for the trial of all crimes, offences and misdemeanors whatsoever, which renders it improper that this statute should be incorporated, &c.

As to the last part of the statute see the note on 9 Hen. 3, Ch. 26.

CHAP. 32. Mortmain by recovery of land by default.

See 2 Bl. Com. 271. And see the note on 9 Hen. 3, Ch. 36.

CHAP. 33. Lands where crosses be set, shall be forfeited as lands aliened in mortmain.

Same.