A statute for the clergy, 25 Edw. 3, Stat. 3.—A. D. 1350.

CHAP. 4. Clerks convicted of felony or treason, shall be delivered to their ordinaries.

The act of 1809, Ch. 138, Sect. 11, provides that all claims to dispensation from punishment, by benefit of clergy, shall be abolished. This provision will render unnecessary a number of statutes which have been found applicable in the province and in the state, and would otherwise have been proper to be incorporated with our laws. But the act of 1809 declares, that persons convicted of felony, before deemed clergyable, (for which no other specific penalty is therein prescribed,) shall be confined in the penitentiary, not less than one, nor more than five years; which terms are, (for crimes heretofore excluded from the benefit of clergy,) extended to five and to twenty years. It becomes necessary, therefore, to make some observations on this statute, and others on the same subject.

It is known that the *privilegium clericale* as it stood at common law, had its origin from the regard of princes and states to the church, which induced them to grant to the clergy considerable privileges and exemptions, principally of two kinds, to wit: Exemptions of places consecrated to religious duties from arrests for crimes, and exemptions of the persons of clergymen from criminal proceedings, in some cases capital, before secular judges.

It is not considered necessary to notice the earlier statutes on this subject, viz. 52 Hen. 3, Ch. 27; 3 Edw. 1, Ch. 2, &c. but this statute declared that clerks convict for treason or felonies, touching other persons than the king or his royal majesty, should have the privilege of holy church; and it is the chief statutary provision under which the benefit of clergy has been claimed in the provincial government, and in the state, in all felonies, either by statute or by common law, unless taken away by express words of an act of parliament, or our provincial or state assemblies.

With respect to the acts of parliament for excluding clergy, they have been considered in England as only restoring the law to the same rigour of capital punishment for the first offence, which it exerted before the *privilegium clericale* was at all allowed; and the prosecutions which took place in the province wherein this privilege was brought in question, will serve to establish a position which is important in the consideration of the statutes, to wit: That in the introduction of the common law for the punishment of crimes, or in the cognizance taken by the courts, of offences under that law, the statutes which were made in affirmance, and also those made in restraint thereof, were of course introduced with, or taken as a part of it, and were less subject to doubt with regard to their extention, than those statutes which created offences.

In the provincial records, before the passage of the statute, 5 Anne, Ch. 6, there are many cases in which an ordinary was appointed, and it is stated that the party did read as a clerk. See the notes on the other statutes as to clergy.

A statute of purveyors, 25 Edw. 3, Stat. 5.—A. D. 1350.

CHAP. 4. None shall be condemned upon suggestion without lawful presentment.

See the note on 9 Hen. 3, Ch. 29.

CHAP. 5. Executors of executors shall have the benefit of the charge of the first testator.

There is no doubt of this statute having been practised under in the province, and in the state.