

See in Harris's Entries, (1 vol. 172,) the form of a declaration by and against such an executor; but the law is considered to be altered by the testamentary law, which declares, (in the 5th chapter, S. 6,) that in case any executor, &c. shall die before the estate shall be fully administered, letters of administration *de bonis non* shall be granted to the person entitled, and that in no case shall the executor of an executor be entitled as executor to administration *de bonis non*.

CHAP. 14. What process shall be awarded against him that is indicted of felony.

See as to this statute 4 Bl. Com. 314, and 2 Hale 194. It has been observed in the note on the statute of 1 Hen. 5, Ch. 5, that in determining that the addition of the estate, &c. was necessary in the indictment then in question. A reference was made by one of the judges, to several acts of assembly, in which the process of outlawry was mentioned. These acts were 1737, Ch. 2, and 1744, Ch. 20, and there were other proceedings in the province to the same effect. In 1666, an act was passed concerning outlawries, the provisions of which cannot be known, as it was not recorded. In 1705, an act was passed for the outlawry of R. Clarke, who was charged with treason, declaring, that unless he should surrender himself within twenty days, he should forfeit his goods and chattels, lands and tenements, as an outlawed person, any want of process, or any other legal proceeding in anywise notwithstanding.

The proceedings against a certain R. H. in 1658, will shew more particularly the extention of this statute. He had been indicted for bigamy, and an inquest was taken before the coroner of St. Mary's county, finding, that according to evidence, the prisoner R. H. did fly for fear of coming to trial for his fact committed. It was moved to the court by the attorney-general, whether or not R. H. should be called at *this* court to outlawry, or should have respite to be called at five several courts, and it was ordered that he should be called at five several courts. It will be observed, that the declaration of rights provides in the 21st section, that no free man ought to be taken or imprisoned, or disseised of his freehold, liberties or privileges, or outlawed or exiled, but by the judgment of his peers, or by the law of the land; which was also a part of Magna Charta.

In the act for the security of the government, October 1777, Ch. 20, directions were given in the 28th section, as to the manner in which persons indicted for high treason might be outlawed, which manner was pursued as to several persons in the general court at May term 1780, and afterwards. It was different from the one used under this statute, being by calling once in the general court, and twice in the county court, from which the *capias* was returned. From the terms of that act, relating only to outlawries for treason, from its silence as to other offences, and from there being no case in the provincial records except that of R. H. which has been mentioned, it is considered that this statute is not necessary or proper to be incorporated, &c.



Statutum de stapulis, Anno 27, Edw. 3, Stat. 2.

This statute contained 28 chapters, which remain in the law French.

As to those concerning the statute staple, see the note on the statutes of Acton Burnel, 11 Edw. 1.



Ordinatio de feodis majorum et constabulorum stapule, 27 Edw. 3.

Same.