

21 James 1.—A. D. 1623.

CHAP. 6. An act concerning women convicted of small felonies.

See 4 Bl. Com. 362, and the note on 25 Edw. 3, St. 3, Ch. 4.

CHAP. 8. An act to prevent and punish the abuses in procuring process and supersedeas of the peace and good behaviour out of his majesty's courts at Westminster, and to prevent the abuses in procuring writs of *certiorari* out of the said courts, for the removing of indictments found before justices of the peace in their general sessions. (Part.)

There was a case in 1711, of a *certiorari* on an indictment for forcible entry, being quashed for want of security; but from the present course of proceeding, in such cases, it does not appear necessary that this statute should be incorporated as to that part. The first part does not appear to have extended.

CHAP. 27. An act to prevent the destroying and murdering of bastard children.

For an account of this statute, see 2 Hale 288, and 4 Bl. Com. 198; by the latter it is stated, that it has been usual in England, upon trials for this offence, to require some sort of presumptive evidence, that the child was born alive, before the other constrained presumption (that the child whose death is concealed, was therefore killed by its parent) is admitted to convict the prisoner. It is therefore surprising, that so many trials and convictions under this statute, should have occurred during the provincial government. This was probably owing to the severity of the laws against women who had bastard children, which severity was thought to be necessary on account of the number of females imported from England as convicts, or as indented servants; and it may be accounted for on another principle, not very favorable to the humanity of our progenitors, to wit: that almost every statute that could be made applicable, for the punishment of crimes, was adopted and executed in the most rigorous manner, and that they were sometimes strained by the courts beyond their real import, for the capital conviction of offenders. The cases under this statute commencing with the year 1665, amount to upwards of thirty, in many of which the offenders were sentenced to death; in several of them, the indictments concluded against this statute by name, although such conclusion was not necessary, and in some cases the verdicts found specially, that the prisoner was guilty of having a bastard child and concealing the death of it. Two instances are selected, which will confirm what has been said.

November 1711, upon the petition of S. Puckharna, a mulatto woman, under sentence of death for the murder of a bastard child, born of her body; she being represented by the honorable, the judges of the provincial court, as an object of clemency, as only convict by the provision of the statute. Resolved, that she be reprieved until her majesty's pleasure be known therein.

Petition of Elizabeth S. that she was tried for murdering her male infant; that the evidence could make nothing appear against her, but that she was delivered of a child, which child was found dead, though no mortal wounds, or even the least signs of any such, appeared on the body of the child. That the counsel having then spoke for your petitioner, that such evidence was not sufficient in law to maintain the indictment, being an indictment at common law, and not on the statute; in that case made and provided, your petitioners' counsel and all others, standers by unconcerned, seemed to understand that the court, and jury also, were of that opinion, which occasioned your petitioner, who