of a county court, commanding them to sign and seal a bill of exceptions, and reciting this statute.

The act of October 1778, Ch. 21, S. 14, directs, that where the judges of courts of law shall be divided in opinion, any person affected thereby shall be entitled to his bill of exceptions, as if the opinion of the court had been against him, and as allowed by law in other cases. This statute is mentioned in the letter from S. Chase. See also 1790, Ch. 42, and 1796, Ch. 67.

CHAP. 34. It is felony to commit a rape.—A married woman elopeth with an advowterer.—The penalty for carrying a nun from her house. (Part.)

The first branch of this statute made this offence a felony as it anciently was, although a different punishment had been substituted by the statute Westminster 1, 3 Edw. 1, Ch. 13. It is well known, that prosecutions for this crime have been made under this statute, both in the province and in the state. On the first settlement, when the extention of the English statutes was opposed by the government party, an act was passed (1642, Ch. 19,) ordaining punishment for what were called certain less capital offences, viz. all offences of homocide, piracy, robbery, burglary, sacrilege, sodomy, sorcery, rape, polygamy and larceny, which were to be determined by the judge as near as might be to the laws of England; but in 1665, there was an indictment for a rape, which concluded against the form of this statute by name. The next cases were in 1669 and 1682, both of which concluded against the statute, and as the person was sentenced to be hanged in the latter case, it is to be presumed that the statute of Elizabeth 18, Ch. 7, was also referred to, as it was by that statute, that the offender was ousted of his clergy. There were several other cases where the offenders were capitally convicted. I have not met with any instance before the revolution, of a prosecution under the 4th section of the statute of Elizabeth, for the abuse of a woman child, under the age of ten years; but the inference may be, that the offence was not committed, rather than that one part of a statute was adopted, and another equally applicable to the situation of the country rejected. This statute was therefore in force in the province and in the state, and remains so as to such offences committed before the passing of the act of 1809, concerning crimes and punishments, (Ch. 138,) unless under the last section thereof, the person convicted shall openly pray the court, that sentence may be pronounced agreeably to the provisions of the said act. By the 4th section of the said act, the punishment for this offence (and of the accessary before) is death by hanging, or confinement in the penitentiary for not less than one year, or more than twenty-one years, and therefore this statute (as to future offences,) is not proper to be introduced and incorporated with our laws; but the part of this statute respecting a woman eloping with an *advowterer*, (a term used by old authors for adulterer,) has been, and still is in force. The last part, as to carrying away a nun, was never in force in the province. See as to a woman eloping, 2 Bac. Abt. title Dower, F.

CHAP. 37. No distress shall be taken but by bailiffs known and sworn.

This statute is stated in 2 Inst. 445, to be in affirmance of the common law. On examining Bacon's Abt. and several other books, it appears not to be noticed therein; but in 3 Bl. Com. 11, it is stated that when a person intends to make a distress, he must by himself or his bailiff enter on the demised premises.

As part of the law relative to distresses, it appears proper that this statute should be incorporated with our laws.