

might; but as this statute gave to them a power of distraining also, it appears on that account, proper to be incorporated.

CHAP. 40. For physicians and their privilege.

See the note on 5 Hen. 8, Ch. 6.



35 Hen. 8.—A. D. 1543.

CHAP. 6. The bill for the better appearance in the *nisi prius*. (Part.)

It was under this statute, made perpetual by 2 and 3 Edw. 6, Ch. 32, &c. that the usual process in juries of a *tales de circumstantibus* was had in the province, and in the state. See 3 Bac. Abt. title Juries, C. By the act of 1796, Ch. 67, S. 24, it is declared, that in petitions for freedom, either party shall have the right and privilege of challenging peremptorily to the number of twelve jurors empannelled, and that for want of a sufficient number remaining upon the original panel a *tales* at the prayer of either party, shall be awarded by the court. And by 1798, Ch. 94, which is a supplement to the act for the direction of sheriffs and coroners in the return of jurors, and for the better regulation of juries it is enacted, that the courts shall, at all times, have power to direct talismen to be summoned to serve on juries, where without such talismen there would not be twenty of the original panel, exclusive of the jury charged, from whom a jury can be formed. This act, as well as that of 1796, seems to refer to an antecedent practice, and they are not inconsistent with the provisions of this statute; besides, that they are confined to civil cases. The 5th, 6th, 7th, 8th and 9th sections of this statute are therefore considered proper to be incorporated, &c. As to the other parts, see the note on 13 Edw. 1, St. 1, Ch. 38.



37 Hen. 8.—A. D. 1545.

CHAP. 8. The act that any indictment lacking these words, *vi & armis*, shall be good. (Part.)

The first part of this statute, corresponding with its title, is considered to have been always in force in the province, and to remain so, although the words referred to are still used in indictments; but the evil complained of was, that indictments had been avoided by writ of error, or plea for want of them. It is therefore proper that this part of the statute should be introduced, &c.

The 2d section took away the benefit of clergy from horse stealers; but it is stated in East's Pleas of the Crown, to have been repealed by the general words of the statute 1 Edw. 6, Ch. 12, except so far as it was therein re-enacted, and that statute is referred to by Blackstone, (4th vol. 289.) As to this offence see the note on that statute.



1 and 2 Philip and Mary.—A. D. 1554.

CHAP. 10. An act whereby certain offences be made treasons, and also for the government of the king's and queen's majestie's issue. (Part.)

See the note on 25 Edw. 3, Stat. 5, Ch. 2. The 8th section, as to misprision of treason is considered proper to be incorporated.