Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Jex (Infant) by his next friend, Dimac Dodson, v. William James McKinney and others, from the Supreme Court of British Honduras; delivered 8th February 1889.

Present:

LORD WATSON.
LORD FITZGERALD.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR WILLIAM GROVE.

[*Delivered by Lord Hobhouse.*]

The sole question in this case is whether the statute of Geo. II., cap. 36, often though inaccurately called the Mortmain Act, is in force in the Colony of British Honduras. The Appellant is the heir-at-law of John Jex, claiming, as under an intestacy, property given by that gentleman's will to certain churches in the Colony. The Respondents maintain the validity of the gifts. They do not deny that the gifts are of such a nature as the statute in question forbids. The Appellant does not assert that the statute is one of those which from their nature should be treated as forming part of the body of law which Englishmen carry with them to a new colony. What is asserted by the Appellant and denied by the Respondents is that the statute has been introduced into the Colony by certain Ordi-

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nances or Acts of Assembly passed in the Colony itself.

The most important of these colonial laws is that which received the Royal assent on the 8th March 1856, and is entitled "An Act to "declare the laws in force in this Settlement." It will be convenient here to state the passages which bear on the present question.

Section 5 enacts :—

"That so much of the common law of England as has been used in or is applicable to this settlement, and the inhabitants thereof, . . . and all statutes of the Imperial Parliament in abrogation or derogation, or in any way declaratory, of the common law, shall be and continue, and are hereby declared to be, part of the laws of this Settlement."

Section 6 is confined to criminal law, and establishes as laws of the Settlement the statutes there described "in so far as the same are ap-" plicable or can be applied to this Settlement and " to the inhabitants thereof."

Section 7 enacts :—

"That all laws of universal application relating to . . . descents, inheritances, and successions; to wills and administrations . . . or generally in relation to property . . . in so far as they are applicable or can be applied to this Settlement and the inhabitants thereof, and are not at variance with or qualified by any local law or recognized custom thereof, shall be and the same are hereby declared to be laws of this Settlement; but this is not extended to any law of any local or limited operation, or to any law relating to bankruptcy or insolvency, or to any Act relating to customs or excise, or to any law relating to or regulating any trade, business, or profession."

By a subsequent Act, which came into force on the 27th of October 1865, it was,

with reference to the Act of 1856, declared that the term "'laws of universal appli-"cation,' used in the seventh section of the "said Act, include all such statutes and laws, "being of the nature and character therein "respectively described, as now have or shall "hereafter have general operation throughout "that part of the United Kingdom of Great "Britain and Ireland called England."

By Ordinance No. XIV., which came into force on the 2nd October 1879, it is enacted in Section 29 as follows:—"Wherever by this "Ordinance, or any other Act or Ordinance, it "is declared that any Imperial laws shall extend "to the Colony, such laws shall be deemed to "extend thereto so far only as the jurisdiction "of the Court and local circumstances permit, "and subject to any existing or future Acts or "Ordinances of the Colonial Legislature. And "for the purpose of facilitating the application "of the said laws, it shall be lawful for the "presiding Judge to construe any enactment of "an Imperial statute with such verbal alteration, "not affecting the substance, as may be necessary "to render the same applicable to the matter "before the Court."

The statute of Geo. II. falls within several of the expressions used in these enactments. It is in derogation of the common law; it relates to successions, and to wills, and to property; and it has general operation throughout England. Whether it also falls within the excepted laws of local or limited operation may be a question of difficulty; but their Lordships do not find it necessary to express any opinion on that point, because they think that the statute is not of such a nature as to fall within the description of laws which are applicable, or can be applied, to British Honduras.

This condition of applicability to the Colony

runs through the whole of the enactments above stated. It is expressly attached to the common law dealt with by Section 5 of the Act of 1856, and to the laws dealt with by Section 7. When laws in abrogation or declaratory of the common law are mentioned, they are not expressly qualified by the same condition; but it must be implied, because it would be absurd to suppose that common law is to prevail in the Colony only if suitable, and that laws abrogating it are to prevail whether suitable or not.

It has been argued at the bar that the laws described are to prevail if they are applicable or can be applied, and that the latter words give a wider sense to the word applicable. Their Lordships read the words "can be" as meaning "can reasonably be," agreeing herein with Lord Justice Knight Bruce, who in Whicker *v.* Hume (1 D. M. G., 506) placed that construction upon similar words in a New South Wales Act. The change of expression would rather seem to point to such cases as are provided for by the Ordinance of 1879, where some amount of moulding in formal or insignificant details is required before an English statute, suitable in its nature to the needs of the Colony, can be actually applied to them.

If the Colonial enactments are to be construed in this way, we are brought back to the question whether the statute of Geo. II. is suitable to a young English colony in a new country. The principle on which such questions should turn has been laid down by Blackstone in his Commentaries, Vol. I., p. 108. It has been applied to the statute of Geo. II. in two English decisions, and every Judge who has addressed his mind to the question has come to the same conclusion. In A. G. *v.* Stewart, with reference to Grenada, Sir Wm. Grant; in Whicker *v.* Hume, with reference to New South

Wales, Lord Romilly at the Rolls, Lord Justices Knight Bruce and Cranworth in the Court of Appeal; Lord Chelmsford, Lord Cranworth, and Lord Wensleydale in the House of Lords; all decided that the statute was framed for reasons affecting the land and society of England, and not for reasons applying to a new colony. Their Lordships think the reasoning on which those decisions are founded is sound reasoning, and is applicable to British Honduras as the Court below has applied it. The result is, that the appeal ought to be dismissed, and they will so humbly advise Her Majesty. The Appellant's next friend must pay the costs.