question. There is the case of Whicker *v.* Hume (7 House of Lords Cases, p. 123), in which it was held that the statutes of mortmain were not applicable to the circumstances of the Colony of New South Wales, following the case of the Attorney-General and Stewart, where the same principle was established in reference to the Colony of Grenada.

Mr. Justice Richmond: That was a very small island.

Mr. Cooper: Yes; but Whicker *v.* Hume was a case from New South Wales, and was decided in 1862 by Lord Chelmsford.

Mr. Justice Richmond: I suppose their Lordships knew of the difference in size.

Mr. Cooper: Whicker and Hume was followed by the Privy Council last year in the cases, Cooper *v.* Stewart (L.R. 14, App. Cases 286), and Jex *v.* McKinney (L.R. 14, App. Cases 77).

Mr. Justice Richmond: I have always disliked the case, because of the narrow ground it is put on. I think the colleges of Eton and Westminster, and some other places, are named in it as beneficiaries to whom these donations may be made. They are made exceptional, and if that were the ground of saying the statute did not apply—that there were some local provisions in the statute—it would be of very serious consequence to the colonies.

Mr. Cooper: The main ground on which it was held in Whicker and Hume that it did not apply was that there was not a Court of Chancery in New South Wales in which a deed could be enrolled.

Mr. Justice Richmond: It has always seemed to me to be a dangerous decision, but we must bow to the decision of the House of Lords. It has been understood that English statutes might be in force, *mutatis mutandis*.

Mr. Cooper: Lord Chelmsford says, "In the course of the argument your Lordships intimated a strong opinion that the Mortmain Act did not apply to the colonies—at all events, not to the Colony of New South Wales. It will therefore be necessary for me to address your Lordships only very shortly upon that subject. I consider that this question is almost determined by the opinion of the Master of the Rolls, Sir William Grant, in the case of the Attorney-General *v.* Stewart, because, although a distinction was sought to be established between that case and the present, by reason of the Island of Grenada, which was the colony in that case, being a conquered country, and this being a settled colony, yet I apprehend it will be found that, unless the Act of 9 George IV., c. 83, applies to this particular case, the principle involved in the decision of Sir William Grant would be conclusive on the present question. It is true that the inhabitants of a conquered country have those laws only which are established by the Sovereign of the conquering country, and that the colonists of a planted colony, as it is said, 'carry with them such laws of the mother-country as are adapted to their new situation.'" That seems to be the true ground on which to determine the question of applicability. But the opinion of Sir William Grant related generally, I think, to the Statute of Mortmain as applicable to all the colonies, for he says, "Whether the Statute of Mortmain be in force in the Island of Grenada will, as it seems to me, depend on this consideration: whether it be a law of local policy, adapted solely to the country in which it was made, or a general regulation of property, equally applicable to any country in which it is by the rules of English law that property is governed. I conceive that the object of the Statute of Mortmain was wholly political—that it grew out of local circumstances, and was meant to have merely a local operation. It was passed to prevent what was deemed a public mischief, and not to regulate as between ancestor and heir the power of devising, or to prescribe as between grantor and grantee the forms of alienation. It is incidentally only, and with reference to a particular object, that the exercise of the owner's dominion over his property is abridged." Then he says, "Now, I think, upon general principles, if the question were, without any reference to any Act of the Legislature, whether the Mortmain Act was applicable to the situation of New South Wales, I should most decidedly, without any hesitation, come to the conclusion that it was not; and therefore I think that it would be necessary for the appellants to show that under some Act of Parliament that particular law was transplanted to the colony, and was engrafted upon the law and institutions there." There is another case upon the same point that I will quote. I submit here that that section of the Act of Settlement was wholly political, and it was shown to be wholly political by the stand the King took for some time prior to the Act being passed in reference to the Bill which fixed and ascertained the Judge's salaries, or, rather, proposed to do so. There was a political party, supported, by the way, at that time by the Judges, and the King refused assent to the Bill. That political party was strong enough for eighty years to prevent that Bill being introduced again.

Mr. Justice Richmond: Do you suggest that it was the subject of a party struggle?

Mr. Cooper: I suggest it was, undoubtedly.

Mr. Justice Richmond: What is your reason for supposing so?

Mr. Cooper: Only that the King would not assent to the Bill——

Mr. Justice Richmond: King William, we know, would not give in.

Mr. Cooper: —and that he was advised not to do.

Mr. Justice Richmond: I understood Mr. Harper to say that he was not able to make out how the Judges were provided for in the interval.

Mr. Cooper: The Bill was dropped, and dropped for nearly eighty years, until 1760.

Mr. Justice Richmond: Is there any record of such a Bill having been brought in in King William's reign.

Mr. Cooper: Yes, shortly before the Act of Settlement. That Bill was not only ancillary but was intended to be introductory to the Act of Settlement; but the party in opposition to the King was not sufficiently strong during that time, nor during the two succeeding reigns, to obtain the kingly sanction to the measure, and it was not introduced again until King George the Third ascended the throne; and then one can quite understand the reason. He was a young king, and it was about the first year of his reign, and he was prevailed upon by his Advisers to approve of the measure.

Mr. Justice Richmond: The Judges seem to have been put upon the Civil List, although I think I understood from Mr. Harper that May does not mention them until 1779.