Mr. Harper: Not until 1779.

Mr. Cooper: There was a lump sum voted to the King for his Civil List, and that was the case even in this colony, and the Judges had to refer to their own contract for the terms of their appointment before their salaries could be ascertained. There was a lump sum for the maintenance of the King's household and Judiciary, and that sum was divided according to a particular agreement and arrangement the King made with the persons entitled to receive the money—showing that, so far as the Act of Settlement was concerned, the establishment and ascertaining of salaries was by the King, up to, at any rate, the year 1763, and that it was not until some considerable time afterwards that the Civil List was removed, and the Judges' salaries placed on the consolidated revenue. Then the last case on the question of applicability is the case of Cooper *v.* Stewart, reported in L.R. 14 Appeal Cases, page 286, and there is a very instructive judgment by Lord Watson upon the whole question. If your Honours permit me, I will read one or two passages. The quotations are from pages 290 and 291, and it is the last judicial deliverance on the subject.

"The extent to which English law is introduced into a British colony, and the manner of its introduction, must necessarily vary according to circumstances. There is a great difference between the case of a colony acquired by conquest or cession, in which there is an established system of law, and that of a colony which consisted of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions. The colony of New South Wales belongs to the latter class. In the case of such a colony the Crown may by ordinance, and the Imperial Parliament, or its own Legislature, when it comes to possess one, may by statute, declare what parts of the common and statute law of England shall have effect within its limits. But when that is not done the law of England must (subject to well-established exceptions) become from the outset the law of the colony, and be administered by its tribunals. In so far as it is reasonably applicable to the circumstances of the colony, the law of England must prevail until it is abrogated or modified, either by ordinance or statute. The often-quoted observations of Sir William Blackstone (1 Comm., 107) appear to their Lordships to have a direct bearing upon the present case. He says,—

"It hath been held that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every English subject, are immediately there in force (Salk 411, 666). But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to the condition of an infant colony, such, for instance, as the general rules of inheritance, and protection from personal injuries. The artificial requirements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as enforced by penalties), the mode of maintenance of the Established Church, and the jurisdiction of spiritual Courts, and a multitude of other provisions are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the decision and control of the King in Council, the whole of their Constitution being also liable to be remodelled and reformed by the general superintending power of the Legislature in the Mother-country."

Blackstone, in this passage, was setting right an opinion attributed to Lord Holt—that all laws in force in England must apply to an infant colony of that kind. If the learned author had written at a later date he would probably have added that, as the population, wealth, and commerce of the colony increased, many rules and principles of English law which are unsuitable to its infancy will gradually be attracted to it, and that the power of remodelling this law belongs also to the colonial Legislature. Then they discussed the question, the particular question raised in this case, which was whether the law of perpetuity was in force in New South Wales, and they came to a conclusion on that ground. Before the same Committee of the Privy Council, in the same volume, at page 77, there was another case in which the same question arose, and was disposed of in the same way. In Jex *v.* Mackinney the note is,—

"*Held*, that, on the true construction of the local Acts and ordinances, the Mortmain Act (9 Geo. II., c. 36) has not been introduced into British Honduras. Although the said Act is included in the description of laws thereby introduced, yet its provisions do not satisfy the prescribed condition of applicability to the colony."

So I put this to the Court: that when the Act of Settlement was passed the Judges who were referred to in the Act were Judges of the Superior Courts at Westminster, and those only. The Act was never intended to apply to Judges outside the King's Courts. Those Courts are Courts which have grown up with the English Constitution, and whatever that section did it was of local significance, and did not affect the colonial possessions of the Crown. That that was so is shown by the circumstance that from that time the King appointed Judges during pleasure to the East Indies, and in the early infancy of the great colonies. The main object of the statute, too, was to place the office of the Judges beyond his control—not so much the Judges themselves as the offices of the Judges. History shows conclusively that neither the Legislature nor the Sovereign ever conceived that the Act restricted the prerogative of the Sovereign or the Crown in any British possession, but only in reference to the superior Courts at Westminster. That being so, I submit to your Honours that we have only our own statutes to deal with. We have no great constitutional principle adopted in this colony through the Act of Settlement. We have only our own statutes to deal with, and the question resolves itself into a question of construction. Now, there is an authority in 23 Chancery Division, L.R., Division I., Chancery, Vol. xxiii. It arose upon the Bankruptcy Acts. There had been a number of Bankruptcy Acts prior to the Act of 1883, and a number of decisions on the law of fraudulent preference, and with a lot of Judge-made law and a lot of statute-made law the Courts