LAW OF MORTMAIN IN THE COLONIES.

"Alienation in mortmain (*in mortua manu*)," says the great commenatator, "is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal": Black. 208. The statutes extending from the Charter of Henry III. down to the fifteenth of Richard II., were intended to prevent the acquisition of land by *corporations*. It is probable that those laws owed their origin entirely to feudal reasons and they are properly called the "Mortmain Acts." The next legislation was the passing of a statute (23 Hen. VIII. c. 6,) at the dawn of the Reformation, by which grants of land to *unincorporated* trustees for superstitious purposes were prohibited. With these exceptions, down to the year 1736, all owners of land in England possessed the power of giving their property to *unincorporated* trustees for any charitable purpose, not superstitious. In that year was passed the Statute of 9 Geo. II. c. 36, commonly styled, *par excellence*, "The Mortmain Act," although technically improperly so called. The object of this Act was to prevent lands from being given to charitable uses, whether in the hands of corporations or of unincorporated trustees.

We propose to speak particularly of this last Statute. It has been said that the reason of the passing of this Act is one of the mysteries of legislation. Although the preamble indicates the existence of a wide-spread mania among languishing and dying landed proprietors, manifesting itself in charitable benefactions to the disherison of their lawful heirs, yet no record of any such epidemic is to be found in contemporaneous annals.* The select committee on Mortmain, which sat in 1844, report that, "though they have endeavoured to make themselves acquainted with the causes which led to the enactment of 9 Geo. II. c. 36, they have failed to arrive at any certain knowledge of the true grounds on which the Act was passed."

Lord Hardwicke has made some observations on the policy of this Act which are pertinent to our present purpose. His Lordship's views are entitled to be received with the very greatest deference, for special reasons. He is supposed to have had a hand in the framing of the Act. He says: "I was by at the making of this Statute": *Sorresly* v. *Hollins*: 9 Mod. 223. He was appointed Lord Chancellor a year after the passing of the Act, and presided in the Court of Chancery for nineteen years thereafter. His judgment, therefore, are "contemporaneous exposition" of the highest value. He says, "the particular views of the legislature were two; first, to prevent the locking up land and real property from being aliened, which is made the title of the Act; the second, to prevent persons in their last moments from being imposed on to give away their real estates from their families. By means of the latter, in times of popery, the clergy got almost half the real property of the kingdom into their hands; and indeed I wonder they did not get the rest, as people thought they thereby purchased heaven. As to the other view, it is of the last consequence to a trading kingdom; to which the locking up of lands is a great discouragement. This indeed, has not so much relation to the Statutes of Mortmain as is thought; which had another view, viz., of services of the crown; and therefore the reasoning producing this Act, is more like the political reasoning relating to the Statute of Westminster II. of Intails:" *Attorney-General* v. *Day*, 1 Ves. Sr. 222.

The fact that this Statute resulted from

* It was about the year this Act was passed that Pope penned his well-known couplet:

"But thousands die, without or this, or that,
Die, and endow a college, or a cat."