hundred and thirty years after the passing of the before mentioned statute, 31 Car. II. c. 2, whereby the Court of Queen's Bench at Westminster was empowered to issue such a writ of *habeas* to Berwick, and fifteen years before the passing of the above mentioned imperial Statute, 14 G. III. c. 83, which recognised the Canadian Courts of Civil and Criminal Judicature. But notwithstanding this, the eminent Chief Justice, Lord Mansfield, who delivered the judgment, uttered the following important passages, the latter of which define and explain the power and jurisdiction of his Court in granting the writ of *habeas corpus* to the Plantations. He said, "That writs not ministerially directed (sometimes called Prerogative Writs because they are supposed to issue on the part of the king), such as writs of mandamus, prohibition, *habeas corpus* and certiorari, are restrained by no clause in the constitution given to Berwick. Upon a proper case they may issue to every dominion of the crown of England. We cannot send a *habeas corpus* to Scotland or to the Electorate. But to Ireland, the Isle of Man, the Plantations, to Guernsey and Jersey, we may —and formerly it lay to Calais. *But, notwithstanding the power which the Court have, yet where they cannot judge of the cause or give relief, they would not think proper to interpose. Therefore, upon imprisonments in Guernsey and Jersey, in Minorca, and in the Plantations, I have known complaints to the* KING IN COUNCIL, *and orders to bail or discharge.* BUT I DO NOT REMEMBER AN APPLICATION FOR A WRIT OF HABEAS CORPUS. *Yet cases have formerly happened of persons illegally sent from hence and detained there, where a writ of habeas corpus out of this Court would be the properest and most effectual remedy.*" So that, taking the whole of this case together, and not selecting isolated passages, it is claimed as an authority against, and not in support of, the power of the superior courts at Westminster, to issue a writ of *habeas corpus ad subjiciendum* to Canada.

In support of Lord Mansfield's opinion, we may here conveniently cite without comment the case of *Fryer v. Bernard*, 2 P. Wms. p. 261, 262, M. T. 1724 (*not quoted in Anderson's case*), a sequestration case, in which it was held that, although the Court of Chancery in *England* might lawfully grant a sequestration against a defendant in *Ireland*, because the courts of justice here had a superintendent power over those in Ireland, and therefore that writs of error lay in B. R. in England to reverse judgments in B. R. in Ireland; yet that the High Court in Chancery in England could *not* legally grant a sequestration to the governor of *North Carolina, or any other of the Plantations*, because Plantation appeals were to the king in council, and not to the High Court of Chancery in England. The Lord Chancellor, Lord Macclesfield, in giving judgment, said—"But as to the sequestration to be directed to the governor of North Carolina, or any other of the plantations, the court doubted much whether such sequestration should not be directed by *the king in council, where alone an appeal lies from the decrees in the Plantations.* For which reason it seemed, that in such cases the planter ought to make *his application to the king in council, and not to this court.*"

The two cases, i. e., *Carus Wilson's case*, 7 Q. B. 984 (1845), and *Dodd's case*, 2 DeG. & Jones, 510, S. C., 5 Jur. n. s. 333 (1857), in each of which it was held that a *habeas corpus ad subjiciendum* issued by an English court could run in *Jersey*, may be conveniently considered together, as both admit of the same answer—namely, that each of them was decided after the passing of the statutes 31 Car. II. c. 2, and 56 G. III. c. 100, which expressly enact that Jersey shall be subject to the English writ. These cases were, therefore, not in point for the applicant.

Crawford's case, 13 Q. B. 613, was decided in the year 1849, and, although it was referred to by the learned counsel for the applicant, its relevancy is not apparent. It was an application for a *habeas corpus ad subjiciendum*, to be directed to the governor of the Isle of Man. This island was purchased by the crown in 1765 and the purchase confirmed by statute 5 G. III. cc 26 & 29, whereby the whole of the island and some of its dependencies were indefeasibly vested in the crown, and became subject to the jurisdiction of the superior courts at Westminster, facts which seem to have been the ground for the court's decision; for, on referring to the report of the case, we find the following marginal note, which is borne out by the judgment:—*Semble.* "That a writ of *habeas corpus ad subjiciendum* runs to the Isle of Man, at any rate since the statute 5 G. III. c. 26, by which the island is vested inalienably in the king and his successors;" and accordingly we find that, though the power of the superior courts at Westminster, to issue their writ of *habeas* into the island, was not given by the previously passed *habeas corpus* act, 31 Car. II. c. 2, yet we also find that it was expressly given by the subsequently passed statute, 56 G. III. c. 100.

It is difficult to ascertain the object for which the case of *ex parte Lees* El. Bl. and El. p. 828, S. C., 5 Jur. n. s 334 (1858), was cited by the counsel for the applicants. It was not a Canadian case, and the learned chief justice, Lord Campbell, in refusing the rule prayed for, gave utterance to the following expressions as to the doubtful jurisdiction of his court:—"This was an application for a rule for a writ of error, or for a certiorari, or for a writ of *habeas corpus*, for the purpose of quashing a conviction of the supreme court of the island of St. Helena. Some old precedents of writs issued out of this court to the French dominions of our early English sovereigns were cited to show that such writs might lawfully issue. No precedent, however, of any such proceeding, with respect to a dependency like St. Helena, was brought before us; *and it was not at all explained in what manner our writs of error, certiorari, or habeas corpus, could be enforced in such dependencies.**

(*The conclusion in August number.*)

LORD CRANWORTH'S BILL TO AMEND THE LAWS RELATING TO CHARITABLE USES.

(*From the Solicitor's Journal*)

The mortmain acts may be regarded in three distinct phases —according as we consider their contravention of the rule against perpetuities; the nature of the property to which they relate; or the administration and judicial procedure best adapted to the effective working of corporate or charitable institutions. The present observations are intended to apply only to the second of these heads of inquiry. The distinction of property into real and personal, which runs throughout our entire jurisprudence, has been, perhaps, in no branch of law more productive of inconvenience, than in that of which we are now treating. This complication has been in a great measure owing to the spirit in which the judges have endeavoured to carry out provisions of the Mortmain Acts, and the acuteness which they have consequently shewn in bringing cases within their purview, notwithstanding that the general leaning of the Courts is against a wide application of the doctrine of equitable conversion. But the main cause of the intricacies of the laws of mortmain is to be attributed to the difficulties that always attend the application of this doctrine. The Mortmain Acts apply to donations of real estate, or of property savouring of realty. Pure personalty is left, as at common law, wholly in the power of its owner, to be granted by will, or by a transaction *inter vivos*, without any ceremony being required to perfect the grant except what the law may require in case the donation were made to a private individual. Very many cases, however, have occurred in which land has been directed to be converted into money, or, *e converso*, in which money has been directed to be invested in land, and great

* This is a true test of jurisdiction, as is shown by Bracton, lib. III. fol. 106, 107 par. 4 & 5, *post*, p. 87.