Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Macleod v. *the Attorney-General for New South Wales, from the Supreme Court of New South Wales; delivered July 23rd,* 1891.

Present:

THE LORD CHANCELLOR.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by the Lord Chancellor.*]

THE facts upon which this Appeal arises are very simple.

The Appellant was, on the 13th of July 1872, at Darling Point, in the Colony of New South Wales, married to one Mary Manson, and, in her lifetime, on the 8th of May 1889, he was married, at St. Louis, in the State of Missouri, in the United States of America, to Mary Elizabeth Cameron. He was afterwards indicted, tried, and convicted, in the Colony of New South Wales, for the offence of bigamy, under the 54th Section of the Criminal Law Amendment Act of 1883 (46 Vict., No. 17).

That Section, so far as it is material to this case, is in these words: "Whosoever, being married "marries another person during the life of the "former husband or wife—wheresoever such "second marriage takes place—shall be liable to "penal servitude for seven years." In the first place it is necessary to construe the word "whosoever"; and in its proper meaning it

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comprehends all persons all over the world, natives of whatever country. The next word which has to be construed is "wheresoever." There is no limit of person, according to one construction of "whosoever;" and the word "wheresoever" is equally universal in its application. Therefore, if their Lordships construe the statute as it stands, and upon the bare words, any person, married to any other person, who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that Colony. That seems to their Lordships to be an impossible construction of the statute; the Colony can have no such jurisdiction, and their Lordships do not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a Colony, and, indeed, inconsistent with the most familiar principles of international law. It therefore becomes necessary to search for limitations, to see what would be the reasonable limitation to apply to words so general; and their Lordships take it that the words "whosoever "being married" mean, "Whosoever being "married, and who is amenable, at the time "of the offence committed, to the jurisdiction "of the Colony of New South Wales."

The word "wheresoever" is more difficult to construe, but when it is remembered that in the Colony, as appears from the statutes that have been quoted to their Lordships, there are subordinate jurisdictions, some of them extending over the whole Colony, and some of them, with respect to certain classes of offences, confined within local limits of venue, it is intelligible that the 54th Section may be intended to make the offence of bigamy justiceable all over the Colony, and that no limits of local venue are to be observed in administering the criminal law

in that respect. "Wheresoever," therefore, may be read: "Wheresoever in this Colony the "offence is committed."

It is to be remembered that the offence is the offence of marrying, the wife of the offender being then alive—going through, in fact, the ceremony of marriage with another person while he is a married man. That construction of the statute receives support from the subordinate arrangements which the statute makes for the trial, the form of the indictment, the venue, and so forth. The venue is described as New South Wales, and Section 309 of the statute provides that "New South Wales shall be a "sufficient venue for all places, whether the in- "dictment is in the Supreme Court, or any other "Court having criminal jurisdiction.—Provided "that some district, or place, within, or at, or "near which, the offence is charged to have been "committed, shall be mentioned in the body of "the indictment.—And every such district or "place shall be deemed to be in New South "Wales, and within the jurisdiction of the Court, "unless the contrary be shown." That, by plain implication, means that the venue shall be sufficient, and that the jurisdiction shall be sufficient, unless the contrary is shown. Upon the face of this record the offence is charged to have been committed in Missouri, in the United States of America, and it therefore appears to their Lordships that it is manifestly shown, beyond all possibility of doubt, that the offence charged was an offence which, if committed at all, was committed in another country, beyond the jurisdiction of the Colony of New South Wales.

The result, as it appears to their Lordships, must be that there was no jurisdiction to try the alleged offender for this offence, and that this conviction should be set aside. Their Lordships think it right to add that they are of opinion that

if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the Bar, it would have been beyond the jurisdiction of the Colony to enact such a law. Their jurisdiction is confined within their own territories, and the maxim which has been more than once quoted, "*Extra territorium jus dicenti impune non paretur*," would be applicable to such a case. Lord Wensleydale, when Baron Parke, advising the House of Lords in *Jefferys* v. *Boosey* (4 House of Lords' Reports, 815) expresses the same proposition in very terse language. He says (page 926), "The Legislature has no power "over any persons except its own subjects, that "is, persons natural-born subjects, or resident, "or whilst they are within the limits of the "kingdom. The Legislature can impose no "duties except on them; and when legislating "for the benefit of persons, must, *primâ facie*, be "considered to mean the benefit of those who "owe obedience to our laws, and whose interests "the Legislature is under a correlative obligation "to protect." All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over her own subjects Her Majesty and the Imperial Legislature have no power whatever. It appears to their Lordships that the effect of giving the wider interpretation to this statute necessary to sustain this indictment would be to comprehend a great deal more than Her Majesty's subjects; more than any persons who may be within the jurisdiction of the Colony by any means whatsoever; and that, therefore, if that construction were given to the statute it would follow as a necessary result that the statute was *ultra vires* of the Colonial Legislature to pass. Their Lordships are far from suggesting that the Legislature of the Colony did mean to give to themselves so wide a

jurisdiction. The more reasonable theory to adopt is that the language was used, subject to the well-known and well-considered limitation, that they were only legislating for those who were actually within their jurisdiction, and within the limits of the Colony.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the Supreme Court should be reversed and that this conviction should be set aside. The Respondent must pay the costs of the appeal.