Judgment of the Lords of the Judicial Committee of the Privy Council, on the Petition of J. L. Marais for special leave to appeal from a Conviction and Sentence by the Special Court of the Colony of Natal (appointed by virtue of Act No. 14 of 1900) in the matter of Regina v. Marais, delivered the 24th July 1901.

Present at the hearing:
THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.

[*Delivered by the Lord Chancellor.*]

THEIR Lordships are of opinion that no leave should be given to appeal in this case.

With reference to the second point, on which their Lordships did not ask Counsel for an answer to Lord Coleridge's argument, there is no doubt that up to the time of the passing of the Colonial Laws Validity Act (28 & 29 Vict. cap. 63) a great many of the considerations which he has urged had given rise to difficulties, and it was for the express purpose of getting rid of the difficulties that had been raised on that subject, and particularly in reference to the words "repugnancy to the Laws of England," that that Act was passed; because one of the common and familiar forms whereby the Colonial Legislatures were constituted and Constitutions given, provided that nothing should be enacted repugnant to the Laws of England; and there is no doubt that that had given rise to some doubts and difficulties which this Act was intended to cure.

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With respect to that matter we have now this Statute of 1865 to construe; and in respect to that Statute what has been pointed out is that the words 'repugnant to the Laws of England' are not now to be, in their bald sense, construed with reference to such a question as this, but you must take the Interpretation Clause, which now qualifies those words, into the consideration of what has been enacted here: that what was to be repugnant to the Laws of England within the meaning of those words was to be a repugnancy such as is repugnant to the provisions of some such Act of Parliament or regulation "as aforesaid"; and that is again qualified in this way:—

"In construing this Act an Act of Parliament or any provision thereof shall be said "to extend to any Colony when it is made "applicable to such Colony by the express words "or necessary intendment of any Act of "Parliament." The obvious purpose and meaning of that Statute was to preserve the right of the Imperial Legislature to legislate even for the Colony, although a local Legislature had been given, and to make it impossible, when an Imperial Statute had been passed expressly for the purpose of governing that Colony, for the Colonial Legislature in that sense to enact anything repugnant to an express Law applied to that Colony by the Imperial Legislature itself. That is the meaning of those words.

As to the other argument with reference to legislation by a Colony which in some respects shall run counter to, or be repugnant to some Law of the United Kingdom, that, if it were construed in the wide sense Lord Coleridge suggested, would render any Colonial legislation illusory altogether; because it is hardly possible to deal with the rights of any British subject by the local Legislature which shall not in some

way or another run counter to some provision in this country which is enacted for a different purpose, having no special reference to the circumstances of the particular Colony. This Statute reconciles the two principles of giving local legislation, but, nevertheless, leaving still open to the Imperial Legislature by express legislative provision the power to do something in the Colony. So much for the second point urged by Lord Coleridge.

With reference to the first point, namely, the constitution of the Court, it lies in a very narrow compass indeed. It comes very much to the question of whether an acting Judge is a Judge of the Supreme Court.

Their Lordships entertain some difficulty in saying how to construe those words that he is to *be* an acting Judge of the Supreme Court, without importing at the same time that when appointed he *is* a Judge of the Supreme Court. By the power of appointment he is made an acting Judge of the Supreme Court; and it was the object of the Statute, apparently, that he should be made a Judge of the Supreme Court with reference to the exigencies of the performance of the duties of a Judge, and the demand upon the Judges of the Supreme Court, to get rid of the difficulty which would arise by the occupation of the Supreme Court in other duties than those which they were habitually performing. There is undoubtedly a curious correspondence between the number of Commissions that may exist at the same time, by the 32nd section (Natal Special Court Act, No. 14 of 1900), and the number of acting Judges who may be appointed. The Governor may appoint two special Commissions, and two acting Judges may be appointed. It does seem to suggest that those provisions are intended to correspond with each other. There is a pro-

vision which certainly does give some protection to the public with reference to the persons appointed. The Governor cannot on his own mere notion appoint a person as an acting Judge for the purposes of this Act of Parliament. By the 28th Section it must be at the request of the Chief Justice. So that in order to preside or to be one of the Commissioners, you must have a person qualified to be a Judge, and an acting Judge must be appointed at the request of the Chief Justice.

It does not appear to be denied, in fact it was admitted, that this particular man was tried by a person who was an acting Judge; and their Lordships are called upon to say that the Court was not properly constituted because one of them was a person who was not permanently a Supreme Court Judge, but was a person who was only an acting Judge within the meaning of this Act of Parliament. Their Lordships are not able to say that that prevents his being a Judge of the Supreme Court; and if he was a Judge of the Supreme Court the provision of the Statute is satisfied, and the Commission was properly constituted.

For these reasons their Lordships will humbly advise His Majesty that no leave to appeal should be given.