English Statutes in force in Jamaica under 1 *Geo.* 2, *c.* 1, *s.* 22. *Repealed and Re-enacted by* 8 *Vict. c.* 16—13 *Edw.* 1, *c.* 11, *and* 1 *Rich.* 2, *c.* 12.

1 Geo. 2, c. 1, s. 22, enacts that "All such laws and statutes of England as have been at any time esteemed, introduced, used, accepted or received as laws in this Island shall and are hereby declared to be" laws of this Island for ever.

Held, that an English statute will not be deemed to have been "esteemed, introduced, used, accepted or received" as a law in Jamaica within 1 Geo. 2, c. 1, s. 22, where no trace can be discovered of its having been acted on in Jamaica; and, consequently that the statutes 13 Edw. 1, c. 11, and 1 Rich. 2, c. 12, are not in force in Jamaica.

This action is framed upon the English statutes 13 Edw. 1, c. 11, and 1 Rich. 2, c. 12. Now unless these enactments be in force in Jamaica the action founded on them is certainly misconceived. It is, I think, conceded that an English colonist carries with him the common law of England from whence he comes; but it is otherwise with the English statute law.

It is most certain that the whole of the English statutes are not in force here; and any one at all acquainted with the early history of Jamaica must be aware that the repeated attempts of the colonists to have them introduced were resisted uniformly by the Government of England for nearly half a century, and when the concession was at last made it was only that the colony should have the benefit of those laws and statutes which had "at any time been esteemed, introduced, used, accepted or received as laws of the Island." (1 Geo. 2, c. 1, s. 22, repealed and re-enacted by 8 Vict. c. 16.)

The maxim, therefore, "*de non apparentibus et de non existentibus eadem est ratio*" applies, and the Court would not be justified, I consider, in holding that any English statute has been esteemed, &c. as being in force where no trace can be discovered of its ever having been acted on.

(*Magnus* v. *Sullivan* (1866), S. C. J. B., Vol. 1, p. 63. Bryan Edwards, C. J.)

Whether English Statute 5 *Rich.* 2, *c.* 7, 15 *Rich.* 2, *c.* 2, *and* 8 *Hen.* 6, *c.* 9, *creating and dealing with the Statutory Offence of Forcible Entry and Detainer have force of Law in Jamaica.*

This matter came before the Court on a case stated by the acting judge of a District Court under Law 25 of 1872, s. 2. The only question of delicacy raised by the case is whether the English statutes (5 Rich. 2, c. 7, 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9) creating and dealing with the statutory offence of forcible entry and detainer have force of law in Jamaica.

In the first place, the learned Attorney-General contended that the Island Act 14 Geo. 3, c. 17, showed that in 1773 the English statutes relative to forcible entry and detainer were recognised as part of our law and raised a presumption that they were so recognised by the Legislature because they had been "esteemed, introduced, used, &c." as laws of the Island prior to the passing of 1 Geo. 2, c. 1. In the second place, he maintained that the provisions of the last named Act were only applicable to English statutes passed after the settlement of the Island, and that the statutes sought to be invoked in this case, having been passed long before that event, were in force before, irrespective of the provisions of 1 Geo. 2, c. 1.

When we dealt with the points submitted to us in the course of the first argument, we had not before us the first of these points, namely, the contention that the passing of the Island Act 14 Geo. 3, c. 17, raised a presumption that the English statutes relative to forcible entry and detainer had been received and used as laws of the Island prior to the passing of 1 Geo. 2, c. 1. This point was not expressly raised at the first argument, and had not been considered by us when we formerly dealt with the case. In these circumstances, as by one former judgment we deferred finally disposing of the questions raised until we should have heard further argument, the point is one which we are still in a position to entertain.

In support of his contention the learned Attorney-General relied on the doctrine recognised by the English Courts, that where it is necessary to establish the immemorial existence of a right, evidence of this existence, and exercise of that right as far back as living memory extends, will, in the absence of any evidence to the contrary, afford grounds on which it may be presumed that the right had existed during legal memory. No instance was cited in which this rule has been applied in circumstances like those before us; nor is this to be wondered at, as probably the enactment contained in s. 22 of 1 Geo. 2, c. 1, by which the question whether an English statute has force of law in this Island is made to depend on proof that it was "received and used" here prior to a particular date is unique.

It appears to us, however, that the principle upon which the rule of evidence rests is applicable to such questions as the one now before us. The rule owes its origin to the difficulty—not to say impossibility—of establishing by strict proof the existence of a right during legal memory, that is, as far back as the time of Richard I. To obviate the mischief which would otherwise have arisen, the Courts have accepted uninterrupted usage during living memory as *primâ facie* evidence that the right was coeval with legal memory.

Now were we to demand strict proof of the fact of a statute having been received and used here prior to 1728, a mischief of precisely the same nature would arise. 1 Geo. 2, c. 1, enacts that where English statutes have been introduced, used and received in Jamaica before its passing they shall continue to be laws of the Island for ever. For many years after the passing of that Act it must have been easy to prove by reference to the records of the Court or by other evidence that any English statute which it was thought to invoke had been received as law in Jamaica before 1728. The difficulty of furnishing such direct proof, however, must have increased with each succession. And now it would be practically impossible to obtain direct proof of such a fact. The records of the Court prior to that date are practically non-existent, and any other form of direct evidence of the fact which would satisfy the requirements of s. 22 of 1 Geo. 2, c. 1. The result would be that hardly in any case would an English statute be invoked as part of our law. The section in question, however, does not require any particular mode of proof, and as proof by the production of documents dated prior to 1728 is now in most cases impossible, we must, in determining whether any particular statute was received and used as law here a century and a half ago, proceed upon presumptive evidence.

Of course, the question whether the evidence is sufficient to raise a presumption, in the absence of evidence to the contrary, that a certain statute was received as law in 1728, must depend upon the circumstances of each case. In the case before us, the terms of the Act 14 Geo. 3, c. 17, clearly show, as we pointed out in our previous judgment, that the Legislature in 1773 recognised the statutory offence of forcible entry and detainer as an offence against the laws of the Island. Further, the case of *Mead* v. *Morrison*, 1 Gr. R. 210, shows that in 1785 the Supreme Court entertained an action brought on one of these statutes (8 Hen. 6, c. 9) to recover treble damages for a forcible detainer, and a more recent decision in 1844 was referred to in course of the argument.

It appears to me that this evidence shows that for more than a century the English statutes dealing with forcible entry and detainer have been uniformly recognised as forming part of the law of the Island, and as the only ground on which the Legislature and the Court would proceed in treating these enactments as law was that, prior to 1728, they had been so received and used, we think that the Act and the decisions referred to raise a presumption, in the absence of evidence to the contrary, that these statutes, in virtue of s. 22 of Geo. 2, c. 1, are law, and that the offences created by them are all offences known to our law.

This being the conclusion to which we have come on the first branch of the argument, it is unnecessary for us to deal with the

question raised as to the sound construction of s. 22 of 1 Geo. 2, c. 1.

We shall accordingly order that the case be referred back with a finding in law that the English statutes relative to forcible entry and detainer are in force in Jamaica, and the points raised by the defendants and reserved by the Court below are not well founded in law and should be overruled, to say nothing as to costs.

(*R.* v. *Stephens* (1888), S. C. J. B., Vol. 4, p. 278, Ellis, C. J., and Curran, J.)

ENROLMENT OF DECREE. *See* WILL.
EQUITABLE GROUNDS. *See* BOND.
EQUITABLE JURISDICTION. *See* EQUITY; NEW TRIAL.
EQUITY DIVISION OF COURT. *See* EQUITY.

EQUITY SUIT. *See also* COSTS; NEW TRIAL.

Objection at Trial that the Action was not an Action at Law, but a Suit in Equity, and ought to have been brought in the Equity Division of the Court.

The claim in *Finke* v. *Goddard* is, first, that the separate property of the defendant, Jane Ann Goddard, may be declared liable for a debt of £99 10*s.* 10*d.*, contracted by her to the plaintiff with interest and costs; second, that she may be ordered to pay the amount due, and if a sufficiency of separate estate for that purpose is not admitted by her, that it may be referred to the Registrar to make and take the necessary inquiries and accounts.

It was objected at the trial that this was not an action at law at all, but a suit in equity, and ought to have been brought in the Equity Division of the Court. With regard to the first point, no kind of doubt can exist. Whatever it may originally have been—and it was certainly launched as an action at law—*Finke* v. *Goddard* in its present form is an ordinary suit in equity. It deals with a subject-matter which has no existence in a court of law, and asks for relief only to be had where equitable doctrines prevail. As to the second point, that in these circumstances it ought to have been set down for hearing in what may be called for convenience the Equity Division of the Court, and has no