Passing over other cases, we come to the doctrine of the pre-revolutionary period as summed up by Blackstone,[8] who, upon this subject delivers himself as follows:

"Besides these adjacent islands [Man and the Channel Islands], our most distant plantations in America, and elsewhere, are also in some respects subject to the English laws. Plantations or colonies, in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between these two species of colonies, with respect to the laws by which they are bound. For it hath been held[9] that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject[10] are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony. Such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what time, and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature subject to the revision and control of the King in council: the whole of their Constitution being also liable to be new—modeled and reformed by the general superintending power of the legislature in the mother country. But in conquered or ceded countries, that have already laws of their own, the King may indeed alter and change these laws, but, till he does actually change them, the ancient laws of the country remain, unless such as are against the laws of God, as in the case of an infidel country.[11] Our American plantations are principally of this latter sort, being obtained in the last century either by right of conquest and driving out the natives (with what national justice I shall not at present inquire) or by treaties. And therefore the common law of England, as such, has no allowance or authority there, they being no part of the mother country, but distinct, though dependent dominions. They are subject, however, to the control of the parliament, though (like Ireland, Man and the rest), not bound by any acts of parliament unless particularly named."

[8] I. Blackstone's Commentaries (3rd ed. Cooley) Introduction, sec. 4, p. 107.

[9] Refers to Salkeld 411, 666.

[10] Refers to 2 Pere Williams 75.

[11] Refers to Calvin's Case, 7. Rep. 17. Shower's Parliamentary Cases 31 (Dutton v. Howell).