

subsisted in England as part of the royal prerogative when our Constitution Act was passed, I can find nothing in the Act or in the system of government which it originated authorizing the exercise of this right by the advice of Ministers in Victoria. It was argued that the authority must be given because responsible government was given, as if the phrase 'responsible government' had a definite, comprehensive meaning, necessarily including the power in question. The phrase has, to my mind, no such force. Responsibility may attach to persons having powers strictly limited, and its existence does not indicate the extent of the authority from which it arises. For this we must look to the terms in which the authority was conferred, that is to say, to the Act of Parliament establishing the system, and to the documents delegating the powers to the Governor who administers it, to ascertain whether by express words or necessary implication the right to exclude aliens has been given." Lastly, Holroyd, J., says, in a passage which also seems worth quoting: "By the Constitution Act itself certain powers are conferred upon the Governor, similar to some of those which in the United Kingdom the Queen enjoys as her exclusive privilege, notably that of proroguing the Council and Assembly, and dissolving the Assembly; that of appointing any officers liable to retire on political grounds, and that of appointing, with the advice of the Executive Council, all other public officers under the Government of Victoria. Powers of this class having been bestowed in express terms, we ought to presume, according to the ordinary rule of constructions, that no others of the same class were intended to pass. The rule is not one of universal application, but in the present instance it should be rigidly applied, inasmuch as it is still a fundamental maxim that the Crown is not bound by any statute, unless expressly therein named, and as a corollary the royal prerogative cannot be touched except in so far as therein expressed. It is, moreover, conceded that the exclusion of aliens is not a local affair in its consequences, which might affect the whole empire; and that circumstance furnishes an additional reason for not implying an intention on the part of the Home Government to vest in the Governor a power which his advisers here might recommend him to execute in a manner detrimental to Imperial interests. Except in so far as his position has been altered by positive enactment of the Home Parliament, or by some statute passed here