

is created, for all purposes within the scope of the Constitution Act, the local Sovereign of Victoria," and he held that the Crown had no longer any right to "instruct" the Governor with reference to the exercise of his powers as such head of the executive of the colony, and that anything to the contrary in his commission or instructions was illegal and void. At the same time he admits, of course, that: "All the prerogatives and powers of the Sovereign are not vested by law in the Queen's representative in Victoria, nor can all of them be the subject of advice to the Governor by the Queen's ministers for Victoria. The prerogatives of war and peace, of negotiation and treaty, together with the power of entering into relations of diplomacy or trade, and holding communication with other independent States, to some one, or all, of which the power to do an act which shall constitute an act of State appears to be annexed, have not been vested in the Governor of Victoria by law express or implied." And so Kerferd, J., in the same case, says*: "If the Crown" (*sc.*, in the Colony of Victoria) "is restricted to the use of those prerogatives mentioned in the Constitution Act and the Governor's commission, then all other prerogatives must be deemed to be excluded. I can find no authority in support of such a contention. . . . I would say that all the prerogatives necessary for the safety and protection of the people, the administration of the law, and the conduct of public affairs in and for Victoria, under our system of responsible government, have passed as an incident to the grant of self-government (without which the grant itself would be of no effect), and may be exercised by the representative of the Crown on the advice of responsible ministers."

But, as already stated, the other four judges did not concur in this view, but held that, even if the prerogative power then in question, *viz.*, that of excluding aliens from entering the colony, could be properly regarded as one relating to the local affairs of the colony, yet the Governor had it not either under the Constitution Act or his commission and instructions. Wrenfordsley, J., says,† "I am not aware of any authority to the effect that in a settled colony like Victoria the Act of Constitution carries with it powers outside or beyond the exact terms of the grant itself." A'Beckett, J., says: "Assuming that the right to exclude aliens

* 14 V.L.R., at pp. 409, 411.

† 14 V.L.R., at p. 437.