

opinion that the legislative and executive powers granted to the Provinces were intended to be co-extensive, and that the Lieutenant-Governor became entitled, *virtute officii*, and without express statutory enactment, to exercise all prerogatives incident to executive authority in matters in which provincial legislatures have jurisdiction; that he had, in fact, delegated to him the administration of the royal prerogatives as far as they are capable of being exercised in relation to the government of the Provinces, as fully as the Governor-General has the administration of them in relation to the government of the Dominion." The remaining judges of the Court of Appeal, while agreeing that the Act in question was *intra vires*, do not specifically pass upon this wide question, deciding the matter on narrower grounds. The case has since been carried to the Supreme Court of Canada, where the decisions of the courts below were affirmed, but the judgments are not yet reported.

By a curious coincidence, in the Australian colony of Victoria a similar theory as to the right to exercise all prerogative powers relating to the local affairs of the colony being vested in the Governor, by virtue of the Constitution Act, though not expressly therein conferred, was propounded by counsel, and received the support of the Chief Justice of the Supreme Court of the colony, and of one of the other judges in the recent case of *Toy v. Musgrove*,* though the four remaining judges took the other view, namely, that certain of such prerogatives, and no others, were, by the provisions of the Constitution Act and his commission, conveyed to the Governor as representative of the Queen. The Chief Justice sums up his conclusion on the point thus:† "The executive government of Victoria possesses and exercises necessary functions under and by virtue of the Constitution Act similar to and co-extensive, as regards the internal affairs of Victoria, with the functions possessed and exercised by the Imperial Government with regard to the internal affairs of Great Britain." Therefore, with entire consistency he held that, in the exercise of his powers as head of the executive government of Victoria, the Governor was not an agent of the Crown, nor an officer of the Secretary of State for the Colonies: "A new and distinct authority is conferred upon him by law on his appointment; he

* 14 V.L.R. 349 (1888).

† 14 V.L.R., at p. 397.