

and assented to by Her Majesty, the Governor himself is the servant of the Crown, tied down by his commission and instructions. It is not pretended that he has been permitted by either to shut out or to remove aliens; and if no such authority has been distinctly vested in him by statute, or delegated to him by the Queen, we may safely conclude that he does not possess it." The case was carried to the Privy Council,* but the appeal was decided on other grounds, and their lordships say that, this being so, they do not deem it right to express any opinion on what rights the Executive Government of Victoria has, under the constitution conferred upon it, derived from the Crown. It involves important considerations and points of nicety which could only be properly discussed when the several interests concerned were represented, and which may "never become of practical importance."†

And before proceeding further to review our own decisions in reference to the point in question, it may be observed that the opinion of the law officers of the Crown in England, dated December 9th, 1887, in reference to the appointment of Queen's Counsel‡ seems to support our leading proposition as applied to legislative powers conferred by section 92 of the British North America Act, even where the executive power in question is clearly of a prerogative character. It does not appear, however, to go to the full length of upholding the supposed wholesale distribution of prerogative powers by that Act, though the matter may be one of little present practical importance. The questions submitted to the law officers were whether a Lieutenant-Governor of a Province in Canada has power, as it were, *ex officio*, to appoint Queen's Counsel, and whether a provincial legislature has power

* [1891] A. C., 272.

† It appears that on December 22nd, 1869 the Legislative Assembly of Victoria went so far as to pass the following resolution (Parliamentary Debates, vol. 9, pp. 2670, 2671): "That the official communication of advice, suggestions, or instructions by the Secretary of State for the Colonies to Her Majesty's representative in Victoria on any subject whatsoever connected with the administration of the local Government, except the giving or withholding of the royal assent to or the reservation of bills passed by the two Houses of the Victorian Parliament, is a practice not sanctioned by law, derogatory to the independence of the Queen's representative, and a violation both of the principle of responsible government and of the constitutional rights of the people of this colony." It seems, however, that no notice was taken by the Imperial Government of this protest, and the practice condemned in the resolution remains unaltered.

‡ Ont. Sess. papers, 1888, No. 37, at p. 30.