

virtue of that appointment, the whole sovereignty of the colony delegated to him as a Viceroy, and represented the King in the government of that colony, there would be good reason to contend that an act of sovereignty done by him would be valid and obligatory upon the subject living within his government, provided that the act would be valid if done by the Sovereign himself, though such act might not be in conformity with the instructions which the Governor had received for the regulation of his own conduct. The breach of those instructions might well be contended on this supposition to be matter resting between the Sovereign and his deputy, rendering the latter liable to censure or punishment, but not affecting the validity of the act done. But if the Governor be an officer merely with a limited authority from the Crown, his assumption of an act of sovereign power, out of the limits of the authority so given to him, would be purely void, and the Courts of the colony over which he presided could not give it any legal effect. We think the office of Governor is of the latter description, for no authority or dictum has been cited before us to show that a Governor can be considered as having delegation of the whole royal power in any colony, as between him and the subject, when it is not expressly given by his commission. And we are not aware that any commission to colonial Governors conveys such an extensive authority." Again, it is said: "All that we decide is that the simple act of the Governor alone, unauthorized by his commission, and not proved to be expressly or impliedly authorized by any instructions, is not equivalent to such an act done by the Crown itself."

In the well known case of the action brought by Mr. Phillips against Mr. Byre, the former Governor of Jamaica, for acts done by him, whilst he was Governor, in suppressing an insurrection in that colony, the question raised was whether the colonial Act of Indemnity was an answer to an action brought in England. That such an Act was thought to be necessary, and that it was alone relied on as a defence to the action, raises a strong presumption that it had been thought that the action might but for this Act have been maintained. It is to be observed, however, that the facts of the rebellion and of its suppression were averred in the plea by way of introduction to the Act of Indemnity, and Mr. Justice Willes, in delivering the judgment of the Exchequer Chamber, after saying that the Court had discussed the validity of the defence upon the only question argued by counsel, namely, the effect of the colonial Act, adds: "but we are not to be understood as thereby intimating that the plea might not be sustained upon more general grounds as showing that the acts complained of were incident to the enforcement of martial law." (L.R., 6 Ex. 31.) It is to be noticed that the nature of those acts, and the occasion upon which they were committed, were shown by distinct averments in the plea.

It is apparent from these authorities that the Governor of a colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited to the powers thereby expressly or impliedly intrusted to him. Let it be granted that for acts of power done by a Governor under and within the limits of his commission he is protected, because in doing them he is the servant of the Crown, and is exercising its sovereign authority; the like protection cannot be extended to acts which are wholly beyond the authority confided to him. Such acts, though the Governor may assume to do them as Governor, cannot be considered as done on behalf of the Crown, nor to be in any proper sense acts of State. When questions of this kind arise it must necessarily be within the province of Municipal Courts to determine the true character of the acts done by a Governor, though it may be that, when it is established that the particular act in question is really an act of State policy done under the authority of the Crown, the defence is complete, and the Courts can take no further cognizance of it. It is unnecessary, on this demurrer, to consider how far a Governor when acting within the limits of his authority, but mistakenly, is protected.

Two cases from Ireland were cited by the defendant's counsel, in which the Irish Courts stayed proceedings in actions brought against the Lord Lieutenant of Ireland. In these cases the Lord Lieutenant appears to have been regarded as a Viceroy. In both the facts were brought before the Court, and in both it appeared that the acts complained of were political acts done by the Lord Lieutenant in his official capacity, and were assumed to be within the limits of the authority delegated to him by the Crown. The Courts appear to have thought that under these circumstances no action would lie against the Lord Lieutenant in Ireland, and upon the facts brought to their notice it may well be that no action would have lain against him anywhere. (*Tandy v. Earl of Westmoreland*, 17 State Trials, 1246. *Luby v. Lord Wodehouse*, 17 Irish Common Law Reports, 618.)

Several cases were cited during the argument of actions brought against the East India Company, and the Secretary of State for India, in which questions have arisen whether the acts of the Indian Government were or were not acts of Sovereignty or State, and so beyond the cognizance of the Municipal Courts. The East India Company, though exercising (under limits) delegated sovereign power, was subject to the jurisdiction of the Municipal Courts in India, and it will be found from the decisions that many acts of the Indian Government, though in some sense they may be designated "acts of State," have been declared to be within the cognizance of those Courts. Thus, in the *Rajah of Tanjore's* case (13 Moore P.C., 22) the question to be decided was thus stated by Lord Kingsdown in giving the judgment of the Committee: "What is the real character of the act done in this case? was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominion and property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law, or was it in whole or in part a possession taken by the Crown under colour of legal title of the property of the late Rajah, in trust for those who by law might be entitled to it? If it were the latter, the defence set up, of course, has no foundation." This Committee, in deciding the questions thus raised, held that the seizure was of the former character, and therefore not cognizable by a Municipal Court. The answer of the East India Company in this case did not rest on the simple assertion that the seizure was an act of State, but set out the circumstances under which the Rajah's property was taken. After referring to the treaties made with the Rajah, it averred that in entering into these treaties, and in treating the sovereignty and territories of Tanjore as lapsed to the East India Company in trust for the Crown, the Company acted in their public political capacity, and in exercise of the powers (referring at length to them) committed to them in trust for the Crown of Great Britain, and that all the acts set forth in the answer "were acts and matters of State."