Upon the hearing of the present appeal the Attorney-General, on the part of the appellant, whilst not giving up the plea in the shape in which it was pleaded, insisted that if it disclosed a good defence in substance to the action, as he contended it did, its form and the arrangement of the parties might be disregarded, and a general judgment given for the defendant; and, though under protest from the respondent's counsel, the discussion at their Lordships' bar was allowed to take the wider scope which the Attorney-General's contention introduced into the case.

If the plea is to be regarded as a plea of privilege only, and as claiming immunity to the Governor from liability to be sued in the Courts of the colony, their Lordships think that it cannot, in that aspect of it, be sustained.

The dictum attributed to Lord Mansfield in Fabrigas *v.* Mostyn, 1 Cowp. 161, that "the Governor of a colony is in the nature of a Viceroy, and therefore locally during his Government no civil or criminal action will lie against him, the reason is, because upon process he would be subject to imprisonment," was dissented from and declared to be without legal foundation in the judgment of the Lords of the Judicial Committee delivered by Lord Brougham in the case of Hill *v.* Bigge (3, Moore, P.C. 465). In that appeal their Lordships were of opinion that the plea of the Lieutenant-Governor of the Island of Trinadad to an action brought against him in the civil Court of the island, claiming that whilst Lieutenant-Governor he was not liable to be sued in that Court, could not be sustained. The action was for a private debt contracted by the defendant in England before he became Governor, but the principle affirmed by the judgment is that the Governor of a colony, under the commission usually issued by the Crown, cannot claim, as a personal privilege, exemption from being sued in the Courts of the colony. The claim to such exemption is thus met: "If it be said that the Governor of a colony is *quasi* Sovereign, the answer is, that he does not even represent the Sovereign generally, having only the functions delegated to him by the terms of his commission, and being only the officer to execute the specific powers with which that commission clothes him."

The defendant sought to strengthen his claim of privilege by averring in his plea that the acts complained of were done by him "as Governor," and "as acts of State." Their Lordships propose hereafter to consider the particular averments of this plea. It is enough here to say that it appears to them that if the Governor cannot claim exemption from being sued in the Courts of the colony in which he holds that office, as a personal privilege, simply from his being Governor, and is obliged to go further, his plea must then show by proper and sufficient averments that the acts complained of were acts of State policy within the limits of his commission, and were done by him as the servant of the Crown, so as to be, as they are sometimes shortly termed, acts of State. A plea, however, disclosing these facts would raise more than a question of personal exemption from being sued, and would afford an answer to the action, not only in the Courts of the colony, but in all Courts; and therefore it would seem to be a consequence of the decision in Hill *v.* Bigge that the question of personal privilege cannot practically arise, being merged in the larger one, whether the facts pleaded show that the acts complained of were really such acts of State as are not cognizable by any Municipal Court. In the case of the Nabob of the Carnatic *v.* the East India Company, Lord Thurlow said that a plea pleaded in form to the jurisdiction of the Court, but which denied the jurisdiction of all Courts over the matter, was absurd; and that such a plea, if it meant anything, was a plea in bar (1 Ves. Jr. 388). In their Lordship's view, therefore, this plea, if it can be supported, must be sustained on the ground mainly relied upon by the Attorney-General, namely, that it discloses in substance a defence to the action.

Before adverting to the sufficiency of the averments in this plea, it will be convenient to refer to some decisions in which the position of Governors of colonies has been considered. In the leading case of Fabrigas *v.* Mostyn, the action was brought against Mr. Mostyn, the Governor of Minorca, for imprisoning the plaintiff, and removing him by force from that island. The Governor's special plea of justification alleged that he was invested with all the powers, civil and military, belonging to the government of the island, that the plaintiff was guilty of a riot, and was endeavouring to raise a mutiny among the inhabitants, in breach of the peace, and that, in order to preserve the peace and government of the island, he was forced to banish the plaintiff from it. It then averred that the acts complained of were necessary for this object, and were done without undue violence. Upon the trial the Governor failed to prove this plea, and the plaintiff had a verdict. When the case came before the Court of Queen's Bench, upon a bill of exceptions to the ruling of the Judge, Lord Mansfield said his great difficulty had been, after two arguments, to be able clearly to comprehend what the question was that was meant seriously to be argued. It seems, however, that the liability of the Governor to be sued was raised, and very fully discussed, one ground of objection being that he could not be sued in England for an act done in a country beyond the seas, and upon this question Lord Mansfield declared that the action would, to use his own phrase, "most emphatically" lie against the Governor. His judgment proceeds to show, in a passage bearing materially on the point now under discussion, in what way a defence to such an action might be made. He says, "If he has acted right, according to the authority with which he is invested, he may lay it before the Court by way of plea, and the Court will exercise their judgment whether it is a sufficient justification or not. In this case, if the justification had been proved, the Court might have considered it a sufficient answer; and if the nature of the case would have allowed of it, might have adjudged that the raising a mutiny was a good ground for such a proceeding."

In the case of Cameron *v.* Kyte (reported in 3 Knapp 332), which came before this Board on an appeal from the Colony of Berbice, the question was whether the Governor had authority to reduce a commission of 5 per cent. upon all sales in the colony, granted to an officer called the Vendue Master by the Dutch West India Company before the capitulation of the colony to the British Crown. It was urged that the Governor was the King's representative, exercising the general authority of the Crown, and, as such, had power to make the disputed reduction. It was, however, decided that the Governor did not hold the position or possess the authority sought to be attributed to him, and that the act in question was beyond his powers. In the judgment of this Committee, delivered by Baron Parke, it is said: "There being therefore no express authority from the Crown, the right to make such an order must, if it exist at all, be implied from the nature of the office of Governor. If a Governor had, by