

151r. Their Lordships think that the learned Judges have misapprehended the true object and scope of the action, and that the fallacy of their judgment is to treat the respondent as if he were the Crown, or acting under the authority of the Crown for the purpose of this action. The object of the action is to restrain the respondent from infringing the appellant's rights by selling property on which he alleges an interest in assumed pursuance of a statutory authority, the conditions of which, it is alleged, have not been complied with. The respondent's authority to sell on behalf of the Crown is derived solely from the statutes, and is confined within the four corners of the statutes. The Governor, in notifying that the lands were rural land open for sale, was acting, and stated himself to be acting, in pursuance of the 136th section of the Land Act, 1892, and the respondent in his notice of sale purports to sell in terms of s. 137 of the same Act. If the land were not within the powers of those sections, as is alleged by the appellant, the respondent had no power to sell the lands, and his threat to do so was an unauthorized invasion of the appellant's alleged rights.

In the case of *Tobin v. Reg.*(2) a naval officer, purporting to act in pursuance of a statutory authority, wrongly seized a ship of the suppliant. It was held on demurrer to a petition of right that the statement of the suppliant showed a wrong for which an action might lie against the officer, but did not show a complaint in respect of which a petition of right could be maintained against the Queen, on the ground, amongst others, that the officer in seizing the vessel was not acting in obedience to a command of Her Majesty, but in the supposed performance of a duty imposed upon him by Act of Parliament, and in such case the maxim *respondet superior* did not apply. On the same general principle it was held in *Musgrave v. Pulido*(1) that a Governor of a colony cannot defend himself in an action of trespass for wrongly seizing the plaintiff's goods merely by averring that the acts complained of were done by him as "Governor" or as "acts of State." It is unnecessary to multiply authorities for so plain a proposition, and one so necessary to the protection of the subject. Their Lordships hold that an aggrieved person may sue an officer of the Crown to restrain a threatened act purporting to be done in supposed pursuance of an Act of Parliament, but really outside the statutory authority. The Court of Appeal thought that the Attorney-General was a necessary party to the action; but it follows, from what their Lordships have said as to the character of the action, that in their opinion he was neither a necessary nor a proper party. In a constitutional country the assertion of title by the Attorney-General in a Court of Justice can be treated as pleading only, and requires to be supported by evidence.

151v. But it is argued that the Court has no jurisdiction to decide whether the Native title has or has not been extinguished by cession to the Crown. It is said, and not denied, that the Crown has an exclusive right of pre-emption over Native lands and of extinguishing the Native title. But that right is now exercised by the constitutional Ministers of the Crown on behalf of the public in accordance with the provisions of the statutes in that behalf, and there is no suggestion of the extinction of the appellant's title by the exercise of the prerogative outside the statutes if such a right still exists. There does