

The Lord CHANCELLOR.—I think the primary question is to determine what the second applies to, which is independent of the functions of the Governor General. The functions of the Governor General come in later.

Mr. COZENS-HARDY.—Section 2 begins by saying: “An appeal to the Governor General shall lie.”

The Lord CHANCELLOR.—The question is, from what? You say only from an Act which infringes the rights which are protected by subsection 1. That is the first step you have to take.

Mr. COZENS-HARDY.—I do not deny that “Act” includes “statute” here, but “Act” does not mean “statute.” “Act or decision of any provincial authority” means something done by the legislature or provincial authority.

The Lord CHANCELLOR.—The only way in which the legislature acts is by statute, is it not?

Mr. COZENS-HARDY.—Is that quite so? Certainly that would not be the case with a provincial authority. The same words apply to both.

Lord WATSON.—And provincial authority under this clause is distinguished.

Mr. COZENS-HARDY.—Yes, it is. I submit although the word “Act” would include a statute of the legislature, yet it is not in terms so described, but it is said to be subject to an appeal because it is something which is contrary to the main purpose, object and intent of the Act.

The Lord CHANCELLOR.—As applied to the legislature does not that mean statute?

Mr. COZENS-HARDY.—It would include it.

The Lord CHANCELLOR.—What else can the legislature do but enact?

Mr. COZENS-HARDY.—There may be resolutions passed. There may be various acts. They might have done some things not in the shape of an Act.

The Lord CHANCELLOR.—We are not talking of an assembly which may have some prerogatives at common law.

Lord WATSON.—I do not think any resolution of the assembly which was not in the form of an Act and not sanctioned by the crown would affect private rights.

Mr. BLAKE.—The legislature is composed of the lieutenant governor and the assembly. It is an Act of the legislature.

Mr. COZENS-HARDY.—That still leaves open a question which I desire to submit to your Lordships. My friends say this cannot apply to an *extra vires* statute.

The Lord CHANCELLOR.—I do not think they said it cannot apply.

Mr. COZENS-HARDY.—I think my friend's argument went to that length.

The Lord CHANCELLOR.—They said it cannot apply in this sense that the provision affecting them, if it were void under subsection 1, could not be described as an Act of the legislature, because an Act of the legislature must mean something which it effectually does and not something which it purports to do and does not.

Mr. COZENS-HARDY.—Is that right? It is not of course usual to provide any machinery for deciding the abstract question whether a by-law of a corporation or an act of a subordinate legislative authority is or is not valid.

Lord WATSON.—It does not seem very probable *prima facie* that there should be a reference given to the governor to consider whether an act which this statute declares to be *ultra vires* shall be retained on the statute book or shall be modified. What is given to the governor is a discretion to do what he thinks fit on appeal. How is he to exercise that discretion in the case of an Act which has been declared by the Imperial legislature itself or the Dominion legislature, acting under the authority of the Imperial legislature to be in itself *ultra vires*?

Mr. COZENS-HARDY.—I should answer your Lordship's question by saying that he is judicially to determine. Of course he had the opportunity of taking the opinion of the court and ultimately the opinion of your Lordships of the Privy Council.

Mr. BLAKE.—He had not at the date of the Act.

Mr. COZENS-HARDY.—That is true.

Lord WATSON.—I should think that was the only case in which an appeal contemplated—if that case is included it is the only case in which an appeal contemplated by subsection 2 would be judicial.