

mean what *is*, but what *seems*. If it seems to him requisite, it comes within his functions, though, in point of fact, it may not be.

Lord WATSON.—The power given in those other cases, if it be given, appears to me to be unquestionably a power to be exercised in the discretion of the Governor. I cannot conceive, if he is made a court of appeal to determine whether it is *ultra vires* or no, that it is to be a matter depending on his discretion. It is a matter to be determined judicially, whoever determines it.

Mr. HALDANE.—Why is it to be said it is a matter of discretion.

Lord WATSON.—The question is whether it complies with or sins against a positive enactment of the legislature.

Mr. HALDANE.—There is not a word about discretion.

Lord WATSON.—I do not think if a question of that kind is raised for decision there can be anything of what I call discretion.

Mr. HALDANE.—There is no question of discretion by the Governor General in these cases.

Lord WATSON.—It is all other cases than an appeal, and the words of subsection 3 still more strongly suggest it.

Mr. HALDANE.—He is to be a tribunal of appeal in relation to provincial authorities, and if that covers judicial authorities it is not unnatural, because he appoints the provincial Lieutenant Governor and some of the judges.

Lord WATSON.—If he is a court of appeal at all in matters falling under subsection 1 that is making two concurrent courts of concurrent jurisdiction, and the general rule with regard to two courts of concurrent jurisdiction is that when the one is fairly seised of the case the jurisdiction of the other is ousted. I do not know of any concurrent jurisdiction which consists of two going on at the same time. That is quite novel to me. There may be such things, but I have never heard of them before. I have heard of concurrent jurisdiction very often.

Mr. HALDANE.—The appeal here is to the sovereign. The supreme authority directing the Governor General is the sovereign. With regard to what the Lord Chancellor said about the expression “seems,” it cannot be that the Governor General could make a mistake and invite the Dominion Parliament to pass, and that they did pass some legislation that was grossly *ultra vires*, without its being subject to the jurisdiction of the Queen and the jurisdiction of your Lordships. Surely it would require much stronger words to do that.

The Lord CHANCELLOR.—It means “as in the opinion of the Governor General in Council is requisite.” That is what it seems to me to be.

Mr. HALDANE.—If the Governor General is to be in a position to enable the Dominion to go wrong, and go far over the line as it would be with regard to educational matters in legislating, surely there must be some way of challenging that? It is not to be assumed there is not in the absence of some words taking it away. I do submit it is a possible construction of these sections and a consistent construction of them to say there was to be some judicial authority which might be more trusted and more apt for the protection of the minority, whether Protestant or Catholic for the time being, than the mere ordinary tribunals of the land. It seems to me to be quite natural it should be so, and if that is once established, then you get it quite plain and distinct what the construction of the section must be. As regards subsection 2 all questions of control over provincial authorities, taking the expression in the widest sense, and it might well be all questions directing the repeal of acts which were not within the competence of the provincial legislature by reason of their being *ultra vires* under section 1, but which might be decided by some judicial authority to be *ultra vires*, would come within the competence of the Dominion Parliament on the initiation of the Governor General, but the functions of the Dominion Parliament would be confined, and strictly confined as they are, I submit by subsections 4 and 3 under both acts, to giving effect to the decisions which the Governor General had come to—not to the exercise of his discretion, but to his position as an authority, who is made supreme.

Now, my Lord, there is very little which I wish to say further about that section. My learned friend, Mr. Blake, referred to various matters, and amongst others the ques-