

Manitoba School Case.

The Lord CHANCELLOR.—You would have a rather curious state of things, because supposing the governor said that it was *ultra vires*, and accordingly told them to pass an Act, and they did not, and then the Canadian Parliament proceeds to legislate, and then the matter goes on as it might before a court of justice——

Lord WATSON.—And both Acts are invalid?

Mr. COZENS-HARDY.—That may be.

Lord WATSON.—I apprehend that the appeal to the governor is an appeal to the governor's discretion. It is a political administrative appeal and not a judicial appeal in any proper sense of the term, and in the same way after he has decided the same latitude of discretion is given to the Dominion Parliament. They may legislate or not as they think fit.

Mr. BLAKE.—Only within the limits of his discretion; they cannot go beyond.

Mr. COZENS-HARDY.—He has to decide whether it affects any right or privilege.

Lord WATSON.—That is not before us now.

Lord SHAND.—Suppose both were legitimate, an appeal to the court of law and an appeal to the Governor General in Council even in the case of an *ultra vires* statute that would not settle this question by any means. It might quite well be so.

Mr. COZENS-HARDY.—I was now dealing with the matter by steps. I say first of all this does include an appeal in respect of an *ultra vires* Act.

Lord SHAND.—You must no doubt look to the exact language of the section, but then you must see how it is controlled by the reason of the thing. I do not think it at all shuts out the question we have to deal with, even supposing it was done as you were suggesting.

Mr. COZENS-HARDY.—That may be so, but now what light does subsection 3 throw upon it? Subsection 3, I venture to think, throws a great light upon it and helps us very much. "In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section." That must mean, I submit to your Lordships, to give effect to subsection 1 of section 22.

Lord WATSON.—It does not require legislation to give effect to the leading part, the introductory part of that section.

Mr. COZENS-HARDY.—Legislation might be necessary to wipe out an Act, whether wholly or in part.

The Lord CHANCELLOR.—To annul the Act altogether.

Mr. COZENS-HARDY.—To clear the statute-book of that which was null and void, which was *ultra vires*. It goes on, "or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and so far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section."

The Lord CHANCELLOR.—Do you suggest that the Dominion Act of Parliament is to be an Act annulling a void enactment of the provincial parliament?

Mr. COZENS-HARDY.—That is my submission, because subsection 3 is divided into two parts, as Lord Watson pointed out. The first gives the Canadian Parliament power to legislate on the recommendation of the Governor General without any appeal to him under subsection 2. It is a separate and distinct power. The Governor General may say, "This Act which has been passed by the legislature of Manitoba is one which is *ultra vires*, one which is inconsistent with subsection 1. That ought not to be a matter of doubt that ought to be left to be decided by a private action which might be raised between a subject of Manitoba and some rating authority or otherwise, but it ought to be got rid of by the Parliament of Canada in order to secure "the due execution of the provisions of this section." The first part of subsection 3, I submit to your Lordships, must plainly apply and apply only to subsection 1.

The Lord CHANCELLOR.—I do not see why.

Mr. COZENS-HARDY.—My Lord, the first part of subsection 3 contemplates a case where no appeal has been made to him at all.

Lord MACNAGHTEN.—I do not quite follow that. You say the first part of subsection 3 applies to a case where there has been no appeal to him.