

OBSERVATIONS

OF

THE CHIEF JUSTICE OF NEW BRUNSWICK

ON

A BILL ENTITLED "AN ACT TO ESTABLISH A SUPREME COURT FOR
THE DOMINION OF CANADA."

*Presented to Parliament on 21st May 1869, by the Hon. Sir John A. Macdonald, K.C.B.
Minister of Justice, &c. &c. &c.*

Under this Bill, though only one Court is proposed to be established, three entirely distinct and separate jurisdictions are raised; and though presided over by the same Judges, the Bill really creates three Courts, entirely different, one from the other, viz:—

1. An Appellate Court.
2. A Court for settling certain Constitutional questions, in the nature of a Court of Original Jurisdiction.
3. A Court of original Common Law, Equity and Admiralty Jurisdiction.

In dealing with the Bill, this must be kept clearly in view, and the Court of Appeal discussed independently of the Courts of Original Jurisdiction, or confusion is unavoidable.

"The British North America Act, 1867," is the Supreme Law of the Dominion, and must be universally and implicitly obeyed. All Acts of the Parliament of Canada, or of the Legislatures of the respective Provinces, repugnant to the Imperial Statute, are necessarily void; and of like necessity when cases come before the legal tribunals, it pertains to the judicial power to determine and declare what is the law of the land. It is said to be "a political axiom, that the judicial power of every well constituted government must be co-extensive with the legislative power, and must be capable of deciding every judicial question which grows out of the Constitution and Laws."

The Parliament of Canada is no doubt supreme in all cases in which it is empowered to act. If therefore the Constitution of the Dominion is "The British North America Act, 1867," we must look there for authority for constituting and organizing Courts.