

CA. JU. 111

JU 22

See S. B's speech on Bill to repeal S. C. 16 & Sect. C^o Act
 Can. Hansard. Feb. 26. 1880.
 Confidentially printed for the use of the Privy Council.
 See S. B's speech on Australia Const. Bill - H. of C. England
 May 21. 1900.

CORRESPONDENCE.

CONFIDENTIAL.

OTTAWA, 6th Oct., 1875.

SIR,—

You inform me that some difficulty is felt by the Colonial Secretary with reference to the constitutional right of Parliament to pass the 47th Clause of the Act to establish the Supreme Court of Canada, and that he is about to submit the question to the Law Officers of the Crown with a view to considering whether the Act should be disallowed, and you request me to report to you confidentially upon the subject.

I do not understand that I am asked to say anything as to the policy of the clause, the advantages of which are obvious.

It is of course difficult to anticipate the views which may be entertained by the Colonial Secretary or the Law Officers of the Crown, and there may very possibly be considerations which have not occurred to me, and to which, therefore, I may not allude, but I will state what does occur to me.

The clause is as follows:—

“The Judgment of the Supreme Court shall in all cases be final
 “and conclusive, and no appeal shall be brought from any judgment
 “or order of the Supreme Court to any Court of Appeal established by the
 “Parliament of Great Britain and Ireland, by which appeals or petitions
 “to Her Majesty in Council may be ordered to be heard, saving any
 “right which Her Majesty may be graciously pleased to exercise by
 “virtue of the Royal Prerogative.”

It will be observed that there is an express saving of the prerogative, thus no question arises as to the power of the Canadian Parliament to affect the prerogative, nor am I called on to consider what may be the nature or extent of Her Majesty's prerogative rights in this connection, or how far they may be affected by the clause.

The clause purports to make final and conclusive the Judgments of the Supreme Court, and to provide that no appeal shall be brought from such judgments to any Court of Appeal established by the Imperial Parliament by which appeals or petitions to Her Majesty in Council may be ordered to be heard.

DN 5335832