

The Earl of Carnarvon to the Earl of Dufferin.

CANADA:

Secret.

DOWNING STREET,
29th August, 1876.

MY LORD,—

With reference to my despatch No. 240, of this day's date, acquainting you that Her Majesty will not be advised to exercise her power of disallowance with respect to the Act intituled "An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of 'Canada,'" I have the honour to acquaint you that Her Majesty's Government have given the most careful consideration to this question, and have had the advantage of conferring very fully with the Minister of Justice of the Dominion on the subject.

2. Her Majesty's Government observe that the Act does not purport to take away any right of appeal to Her Majesty in Council from any judgment of a court in any Province of Canada, as to which a right of appeal at present exists. If from any such judgment there is at present a right of appeal to Her Majesty in Council, that appeal may still be brought. But the Act, while it creates a new Supreme Court of Appeal for the Dominion, gives an appeal to that court, under certain limits, from all final judgments of the highest court of final resort in every Province.

3. With regard to the judgment of this Supreme Court, the 47th Section of the Act provides 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 Her Royal prerogative."

4. It is to be observed that in this section the affirmative words "the judgment shall be in all cases final and conclusive," appear to be introductory and correlative to the negative words which follow: "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," and inasmuch as the Parliament of the United Kingdom has not established, and is not likely to establish, any such Court of Appeal, this portion of the clause would seem to be altogether inoperative.

5. Supposing, however, that the affirmative words "The judgment of the Supreme Court shall in all cases be final and conclusive," were to be looked upon as operative, they must now be read in connection with the saving which is made of "any right which her Majesty may be graciously