

THE SUPREME COURT.

Supreme Court in refusing the writ, or remanding the prisoner, in criminal cases under any act of Canada, or in extradition cases under any treaty (secs. 49 & 51); and (2) from any provincial court, in any case of proceedings for or upon a writ of habeas corpus, not arising out of a criminal charge (sec. 23); and such appeals are to be heard without security being given (sec. 31).

4. *Appeals in Election Cases* are regulated by the 48th section, which transfers to the Supreme Court all appeals from the decisions of the provincial judges under the Controverted Elections Act of 1874, and which section is to take effect "when the Supreme Court is organised and in the exercise of its appellate jurisdiction." The Court, on hearing such appeal, is either to finally decide the question, or "in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the court or a judge thereof, or upon commission."

The Supreme Court is to hold two sessions yearly at Ottawa—one commencing on the third Monday in January, and the other on the first Monday in June, and each session is to be "continued until the business before the Court is disposed of;" but the Court may adjourn from time to time. Appeals are to be brought within 30 days after the decision in the court below. Barristers, advocates, attorneys, solicitors, or proctors in the provincial courts may practise in the Supreme or Exchequer Court, and while so practising, shall be officers of such court.

The Act contains other provisions as to procedure, which will doubtless be studied when the rules of the court are promulgated. Our purpose has been to give a general sketch of the functions of the new Supreme Court for Canada, to which most important questions affecting the

constitutional and local jurisprudence of this country are about to be committed.

Its judges will have a great national trust committed to their keeping. This will require of them not only a constant exercise of technical legal knowledge in disposing of ordinary legal questions, but an exercise of high judicial skill in interpreting the constitutional intricacies of parliamentary jurisdiction, and in shaping their decisions not solely by technical or case law, but according to the more liberal rules of constitutional jurisprudence.

The observations of a learned Judge of the Supreme Court of the United States, in the case of *Osborne v. Bank of the United States*, 9 Wheat. 866, may fittingly be engraved on the desk of each judge of our new Court, as embodying the principles to guide him in the discharge of his judicial functions: "The judicial department of the Government has no will in any case. Judicial power, as contradistinguished from the power of the law, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion it is a mere legal discretion, to be exercised in discerning the course prescribed by the law; and when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, but always for the purpose of giving effect to the will of the Legislature, or, in other words, to the will of the Law."
