

THE SUPREME COURT.

to issue writs of habeas corpus, for the purpose of an inquiry into the cause of commitment in any criminal case, under any Act of Canada, or in any case of demand for extradition under any treaty (secs. 51 and 49).

5. *Judicial Opinions to the Crown.*

The Governor in Council may refer to the Supreme Court, for hearing and consideration, any matter whatsoever, and the Court shall thereupon hear and consider the same, and certify their opinion to the Governor. But any judge or judges who may differ from the majority may in like manner certify his or their opinion to the Governor (sec. 52). This provision, except as to the opinions of the minority, is similar to the 4th clause of the English Privy Council Act of 1833 (3 & 4 Wm. 4th, c. 41), and provides for the Supreme Court performing the delicate and important duties which in England appertain to the Judicial Committee of the Privy Council. There is no limit to the extent and variety of matters referable under this clause of the Act, and the Crown may thus obtain the judicial opinions of the judges in matters not falling within the range of ordinary legal jurisdiction. In England, it would appear from the reported cases, that in practice the jurisdiction has only extended to advising the Crown to grant leave to appeal in cases where appeals did not ordinarily lie, and to cases not strictly appealable grievances. The Supreme Court of the United States soon after its establishment announced that it could only be called upon to decide controversies brought before it as a legal tribunal, and that its judges were therefore bound to abstain from extra-judicial opinions on treaties or points of law, even though solemnly requested by the executive.

6. *Private Bills and Petitions therefor.*

The Supreme Court, or any two judges thereof, are to examine and report upon any private bill, or petition for a private

bill, when referred to the Court by the Senate or House of Commons (sec. 53). This duty is in some measure analogous to that under which the Ontario Judges are required by 34 Vict. c. 7, and 38 Vict. c. 7, Ont., to report in respect of any "Estate Bills" or petitions therefor, which may be referred to them by the Legislative Assembly. The experience of the Ontario Parliament is favourable to investigations by such independent judicial officers; and the Supreme Court in this department of its work will not only materially aid the legislative functions of Parliament, but may prevent the passing of private bills which clearly belong to the jurisdiction of the local houses. In England, the House of Lords, having the constitutional right to consult the judges and law officers of the Crown in matters of law, has a standing order under which "Estate Bills" are referred to any two judges to examine and report their opinion thereon, unless where the Estate Bill has been settled in the Court of Chancery. But bills affecting charity estates are referred to the Attorney-General, and no such bill can be read a second time until a report has been received by the House from that officer.

7. *Constitutional Interpretation.*

A further jurisdiction—which must await confirmatory legislation by the Provincial Legislatures—relates to suits, actions or proceedings in which the parties by their pleadings have raised the question of the validity of a Dominion or a Provincial Act, when in the opinion of a judge of the court in which the same are pending such question is material; in which case, such judge shall order the case to be removed to the Supreme Court, where the question shall be decided; and after decision by the Supreme Court, the case shall be sent back with a copy of the judgment to the court or judge whence it came, to be then dealt with (secs. 54, 56 and 57). This provision allows all civil