Lord Herschell, Lord McNaghten, Lord Watson, and Lord Bramwell on the one side, and Lord Morris and Lord Field on the other, the majority holding that the decision of the Court of Appeal was wrong, and that the order should not have been reversed. This turned on the interpretation of the Act, which gave the right of appeal against the order, and the question was whether the word 'order' meant all orders made, or would the Court read into the Act practically this clause: viz., "such orders as by custom were appealable before the Act passed"—because that was the effect of the decision of the House of Lords; and they entered into an investigation as to whether it was customary or known to law, or whether it was constitutional, to allow an appeal against a decision under the Habeas Corpus Act discharging of the prisoner. I submit that reading passages from Lords Halsbury's and Herschell's judgments, it will be seen that the case has a great bearing on this case, in this way: that the Court now in this case will have to do the same as the Court in English cases has done—not to use the wide general words of section 5 without qualifying them by constitutional usage and law that has been in force in England and in all the colonies that have had representative government since 1760. Lord Halsbury says, on page 517,—

"My Lords,—I have insisted at some length upon the peculiarities of the procedure, because I think one cannot suppose that the Legislature intended to alter all the procedure by mere general words, without any specific provision as to the practice under the writ of *habeas corpus*, or the statutes which from time to time have regulated both its issue and its consequences. My Lords, I do not deny that the words of section 19 literally construed are sufficient to comprehend the case of an order of discharge made upon application for discharge upon a writ of *habeas corpus*, but it is impossible to contend that the mere fact of a general word being used in a statute precludes all inquiry into the object of the statute or the mischief which it was intended to remedy. In the great case of Stradling *v.* Morgan the Court of Exchequer was called upon after verdict to construe the statute upon which the action was brought, and which used the words 'any Treasurer, Receiver, or Minister accountant,' and the Court held that, however wide the words, the statute must be taken not to have meant to use the words in their absolute generality, and yet all agreed that the Receiver in question was within the words of the statute. In the argument and the judgment illustrations are given of the principle upon which statutes ought to be expounded, which have many times since been referred to as satisfactory in reason and common-sense. Thus, the word 'presently' answer to the creditor (*i.e.*, immediately), in a statute, has been construed to mean not that the extenders shall immediately pay, but immediately become debtors. The words 'no writ shall abate by exception of non-tenure of parcel, but for the quantity of the non-tenure which is alleged,' were held to mean, only some writs shall not abate, which determination is quite contrary, it is said, to the text. So that the statute of Marlbridge enacts that 'none from henceforth shall cause any distress that he has taken to be driven out of the county where it was taken,' and says, further, 'If the lord presume to do so against his tenant he shall be grievously punished by amercement.' Yet, in 1 Henry VI. it was held that if one had a manor in one county, and a person holds lands which he has in another county of this manor 'it was lawful for the lord to distrain for the services, and to carry the distress to the manor into the other county where the manor is, notwithstanding the said statute.' And yet it seems contrary to the letter of the Act, as it is in truth contrary to the generality of the letter of the Act. But the Judges have expounded the intent of the makers of the Act not to extend to the lord but where the seignory and the tenancy are in the same county. So that by such exposition, made according to the intent of the Act, the generality of the words is abridged. From these and similar examples a canon of construction has been arrived at which has often been quoted, but which is so important with reference to the question now before your Lordships that I quote it once again: 'From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach some persons only, which expositions have always been founded on the intent of the Legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter and according to that which is consonant to reason and good discretion.'"

I also might refer to Lord Herschell on page 529. The point in his judgment is this: "It is not easy to exaggerate the magnitude of this change; nevertheless it must be admitted that, if language of the Legislature interpreted according to the recognised canons of construction involves this result, your Lordships must frankly yield to it even if you should be satisfied that it was not in the contemplation of the Legislature." I submit in reference to this case that, looking at this case, the position is this: Suppose there was no context to refer into the Act of 1882—suppose, for example, there was no other Act—as I submit there is—to be read along with it—*i.e.*, the Civil List Act of 1873—the Courts would hesitate to hold that the wide general words of section 5 meant, looking at the constitutional question, leaving out of consideration sections 11 and 12, leaving out of consideration the question of the Civil List Act altogether, but looking at section 5 alone,—the Court would hesitate to hold that under the wide general words in section 5 the Legislature had given power to the Executive to create perhaps ten or twelve Supreme Court Judges without any salaries at all. I submit that the other side will have to contend, if they hold that this Commission was duly issued, that the words of section 5 of the Act of 1882 gave power to the Executive to create, if they please, even twelve Judges. Now, we have heard something about packing the Upper House, and perhaps a defeated Ministry might pack the Upper House without the sanction of Parliament, and in history we hear once of an attempt, in the reign of William IV., to pack the House of Lords, but there has never been known yet in history an attempt allowed by the law to pack the Supreme Court Bench.