used in that sense by the House of Lords. That case, however, in no sense weakens the position we have taken up; and if, as ought to be done, the facts are examined carefully, the true reason for the judgment in Bell-Cox *v.* Hakes will be apparent. The respondent had been discharged, by a Court having power to discharge him, upon a writ of *habeas corpus*, and, as it is put in one of the cases, it is a very difficult thing, where a man is discharged on a writ of *habeas corpus*, to catch him again, and it was never intended that when a writ of *habeas corpus*—one of the foundations of the liberty of the subject—had been issued, and the defendant discharged, that he should again be put in peril; and it was because of the strong general principle underlying the foundation of the writ of *habeas corpus* that the House of Lords held that it would require express words before an appeal could lie, from the discharge by the Court of Queen's Bench of a prisoner upon *habeas corpus*. That was the distinct principle upon which the Court decided that case—that mere general words in the Judicature Act would not give right of appeal. If they intended to so alter the constitutional principle—which had been well established both by statute and by judicial decision—that when a prisoner was once discharged by writ of *habeas corpus* he could not be again arrested, then the Court held that they should have done it by express words. Lord Herschell puts the principal ground of the decision, on page 532: "But when once a prisoner has yielded his body or been taken into custody, and has been discharged by a Court of competent jurisdiction, I can find no authority for a subsequent arrest."

If they had upheld the contention that the discharge of a prisoner by a competent Court could ever be set aside on appeal, and the prisoner rearrested, then, I submit, the whole of the virtue which is supposed to exist in a writ of *habeas corpus* would have been destroyed. The case went upon the narrow point expressly stated at page 534:—

"I think it is impossible to read the section your Lordships have to construe without seeing that the power to hear and determine an appeal, and the power to enforce the judgment of the Court of Appeal in case it should differ in opinion from the Court below, were intended to be coextensive. And I cannot think that it was ever contemplated that an appeal should be entertained from any class of orders when that which was effected by them could never be effectually interfered with. The jurisdiction of the Courts whose functions were transferred to the High Court to discharge under a writ of *habeas corpus* was well known, and if had been intended that an appeal should lie against such an order, I think that provision would have been made to enable the Court of Appeal to restore to custody the person erroneously discharged. In the absence of such a power the appeal is futile, and this appears to me to be a sufficient reason for holding that the Legislature did not intend the right to hear and determine appeals to extend to such cases."

That was all that was decided in the case, and, although Lord Halsbury quoted a canon of construction which no one would for one moment attempt to dispute, yet it was not necessary for the decision of that case to invoke the assistance of that canon; but there was the fact that the prisoner was discharged, and there was the fact that, even if the Court of Appeal reversed the order, there was no means of catching him again. He had been legally discharged, and the appeal would have been futile. That is practically the ground upon which the Court decided. I submit, therefore, your Honours, that an examination of my friend's authorities shows that every one of them, including the last case he quotes, is an assistance to the arguments which we have endeavoured to submit. Coming to the next question, I propose to offer a very few remarks on the subject of the arrangement or contract made by the Government with Mr. Justice Edwards. I did not understand my friend to deny that in some cases the Governor might have power to enter into a contract.

Sir R. Stout: He could not do it without statutory authority.

Mr. Cooper: I take it to be a clear and sound principle that the Governor could contract by virtue of either some express or implied power, but he does not require express statutory authority, and it is enough if there is sufficient grounds by which the necessary implication of authority to make a contract may be assumed; and that authority may be obtained either by virtue of the Governor's Commission or under some statute under which he may act. I will refer your Honours first of all to the Governor's Commission. The Commission under which Lord Onslow now acts, and was acting when this appointment was made, is the permanent Commission which was issued at the time Sir Hercules Robinson was appointed, and appears in the Appendices to the Journals of the House of Representatives, Session 2, 1879. First there is the general authority:—

"We do hereby authorise, empower, and command our said Governor and Commander-in-Chief (hereinafter called 'the Governor') to do and execute all things that belong to his said office according to the tenor of these our letters patent, and of such Commission as may be issued to him under our Sign-manual and Signet, or by our Order in Privy Council, or by us through one of our principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the colony."

Then under paragraph 8 of the Commission: "The Governor may constitute and appoint in our name and on our behalf all such Judges, Commissioners, Justices of the Peace, and other necessary officers and ministers of the colony as may be lawfully constituted or appointed by us." Now, under the Act of 1882 the Governor has power to appoint. As to the words "lawfully constituted or appointed by us," we find the meaning of those on reference to the Act of 1882. First, a Judge must be appointed during good behaviour; and, secondly, he must be taken from a certain class of persons. Those are the two requisites which are necessary to make an appointment lawful. It must be an appointment permanent during good behaviour, and the appointee must be selected from a certain named class of persons. Therefore, if the Governor has power to appoint, he has power to contract in reference to an appointment, because he is entitled to do all things which are necessary to carry out the powers which are given to him, either by the Commission or by the statute, so long as he acts according to the law.