ture, must be understood, *ex majore et abundanti cautela*, in the use of the words any "Act of Parliament," to have renewed and repeated the restraint imposed on colonial legislation, by the Acts 7 & 8 Will. III. cap. 22. Sec. 9.—6 Geo. IV. c. 114. Sec. 49, and 3 & 4 W. IV. c. 59, 56. already quoted; while the concluding part of the proviso, from special considerations, protects against repeal or alteration, the class of Provincial Statutes, of which mention has just been made. In adopting, therefore, the construction, which the Court puts on the Statute in question, the principal test of a sound and good construction is found, in the circumstance of its reconciling the proviso with the purview or body of the statute, and the several clauses and parts of the statute, as well as the particular parts of the proviso, with each other; thus giving full and entire effect to the whole statute, according to the intention of the legislature, and the sense and meaning of its enactments. Although the reasonable and proper interpretation of the statute, as understood by the Court, is thus established, *ex visceribus actus*, without the aid of extrinsic circumstances, I may, perhaps, be allowed, so far to refer to the debates in the House of Commons, in relation to this statute, in its progress through that House, portions of which have been cited in the argument of this case, as to observe, that these debates, as reported, seem to confirm the construction which has been put on the concluding part of the proviso; inasmuch as the protection of the Tenures Act, in particular, as altered and amended by the suspended Legislature, (*a*) against further alteration by the newly constituted Legislature, appears to have furnished the immediate motive for that part of the proviso. On the grounds now stated, the Court can entertain no doubt, that the first reason, which has been assigned, for the supposed invalidity of the ordinance, namely, want of power in the present Provincial Legislature, to suspend the Statute 31 Charles II. c. 2, is without any foundation whatever.

The second reason, urged against the validity of the ordinance, is derived from the fact, that a proclamation was issued, for convening the Special Council on the 9th November, and that the ordinance was passed on the 8th of that month. It is to be observed, that the act, under which the present Legislature is constituted, prescribes no form in which the Special Council is to be convened, nor does it require any specific interval of time to elapse, between the notice of a meeting, and the actual meeting of the Council. The third section enacts "that it shall be lawful for the Governor, with the advice and consent of the majority of the councillors present at a meeting or meetings, to be for that purpose, from time to time, convened by the Governor, to make laws, &c." The manner of convening the Special Council is, therefore, left entirely to the discretion of the Governor. The ordinance which is objected to purports, upon the face of it, to have been enacted by the Governor "with the advice and consent of the Special Council for the affairs of the Province, constituted and assembled, by virtue of an act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of the reign of Her present Majesty, intituled, "an act to make temporary provision for the government of Lower Canada." The Proclamation of the 9th Nov. is offered as presumptive evidence, that there was no Special Council convened on the 8th. But this is an averment against the truth of what is stated in the ordinance, by the legislature itself, and cannot, therefore, be received. (*b*) Acts of the Legislature are records of the highest authenticity and authority, affording the most absolute proof (*c*). They admit, therefore, of no contradiction, or proof to impeach the truth of what is expressed in them. This Court cannot, therefore, entertain such a ground, for impeaching the validity of the ordinance.

The third reason urged against the validity of the ordinance is, that the Special Council has not been appointed by Her Majesty.

By the 2d section of the act 1 Victoria, ch. 9, Her Majesty may *appoint*, or may *authorize* the *Governor* to appoint the Special Councillors, who are to compose the Special Council. It is not, therefore, necessary, under this act, that the *immediate* appointment of Special Councillors should proceed from Her Majesty.

The grounds on which the validity of the ordinance has been impeached being disposed of, we come now to the second general ground, on which the applicant's right to the writ of *Habeas Corpus* has been urged. This ground is derived from the first section of the ordinance passed on the 8th November, by which it is enacted "That no Judge or "Justice of the Peace shall hail or try any person or persons committed as mentioned in the ordinance, without an order from the Governor, &c." It has been contended that the word "Judge," in this ordinance does not comprehend this Court, and, that therefore, no restraint has been laid on *its* power to bail the prisoner.—This point was raised, and determined by the Court of King's Bench, in England, nearly 150 years ago, which determination has since continued to be law there, and therefore, very little need be said on this part of the subject before us. The words of the ordinance now referred to, have been copied from the English statutes, by which the *Habeas Corpus* Act has been at different periods suspended, in England. The same interpretation of these words, as now contended for, was urged in the case of the *King vs. the Earl of Torrey* and others in the reign of Will. III. (*c*) and was then held to be erroneous, it being determined, that the words in question included the Court of King's Bench, and restrained that Court from bailing the prisoners, charged with the offences mentioned in the statute suspending the *Habeas Corpus* Act.—This decision has since been acted upon as law, from that period to the present, as may be ascertained by referring to the cases which have since occurred. In the case of the *King* vs. *Despard*, which was cited by the prisoner's counsel for the purpose of establishing a different proposition, no question was raised on this point, it being taken for granted that the Court had no power to bail the prisoner.

The third and last ground, on which the Court is called upon, to issue this Writ of *Habeas Corpus* is, that there is no discretion in the Court, to grant or refuse it, and that it must issue, as of course, even though, after it has been issued and returned, the prisoner must be remanded.

This propositition, if true, would not be consistent with the general wisdom of the law, which does not require acts of authority to be performed, which can be of no use, to the party who solicits them, and would be perfectly nugatory. But it is, we think, erroneous. It is, altogether, within the discretion of this Court, to grant or refuse a Writ of *Habeas Corpus*; and convinced as we are, that if the Writ were issued and returned, we must necessarily remand the prisoner, on the grounds which have been stated, our discretion would be ill exercised, if we were to issue it. The case of the King vs. Despard was referred to, in support of this ground, but no such point was agitated in that case. The authority which gave occasion, for a time, to the supposition, that a Writ of *Habeas Corpus* was to be issued, as of course, was that of the King vs. Flower, (*d*) in which a hasty *dictum* fell from Lord Kenyon, that was supposed to warrant this proposition. But this point, afterwards, in 1820, came under consideration of the Court of King's Bench, in the case of the King vs. Hobhouse, (*e*) and the *dictum* of Lord Kenyon, was then held to be unfounded in law. On the ground of authority, therefore, as well as of reason,

(*a*) Vide Prov: Stat: 9. Geo: IV. c. 77.

(*b*) Vide Co. L. 260. a. 6 Com. Dig. v. Record E. p. 170.

(*c*) 1 Gilb. ev. p. 11. 1 St. p. 2. p. 161. 1. Ph. on vid. 214.

(*c*) Vide 8 Mod. p. 98 and Rex. vs. Bernardi in notis, Holt's rep. p. 84. 1 Salk, p. 10.—Rex vs. Despard, 7 T.R. p. 736.

(*d*) 27 Vol. State Trials p. 1022. 8. T. R. 314.

(*e*) 8 B. & A. 420.