'Habeas Corpus with all the benefit and relief 'resulting therefrom, at all such times, and in 'as *full, ample, perfect* and *beneficial* a manner, 'and to all *intents, uses, ends and purposes* as Her 'Majesty's subjects within the *realm of Eng-* 'land, committed or detained in any prison 'within that realm, are there entitled to that 'writ, and to the benefit arising therefrom by 'the common and Statute laws thereof.'

"The foregoing emphatic declaration of the Legislature makes it our duty to inquire whether, at the time of the passing of our Habeas Corpus Act, a subject of Her Majesty within the realm of England, if detained in prison there, under circumstances similar to those under which the prisoner is now detained here, would have been entitled to give bail.

"Sir Matthew Hale, than whom a higher authority cannot be cited, laying down the law upon the subject of bail, says: 'regularly in 'all offences, either against the common 'law or acts of Parliament, that are *below* 'felony, the offender is *bailable*, unless, 1st, he 'hath had judgment, or 2nd, that by some 'special act of Parliament bail is ousted.' Here it is to be observed that the word *bailable* in the foregoing passage is construed by Blackstone, vol. 4, p. 298, as signifying that the party *ought to be admitted to bail;* and it is in that sense that it is generally used by the writers on this subject.

"The rule laid down by Chief Justice Hale was acted upon by the Court of Queen's Bench in the time of Chief Justice Holt, as will be seen on reference to 1 Salkeld, p. 104, where Mariott's case is reported as follows:

"Mariott was committed for forging endorse- "ments upon Exchequer bills, and upon a Ha- "beas Corpus was bailed, because the crime "was *only a great misdemeanor;* for though the "forging the bills be *felony*, yet forging the en- "dorsement is not." This case, decided in 1698, is of itself sufficient to show that the distinction between felonies and misdemeanors with respect to the right to be admitted to bail, is not, as has been contended, an invention of modern times; the truth being that that distinction is to be found in our earliest statutes on the subject."

[Judge Meredith next alludes to the following cases: Queen vs. Tracey, decided in 1705, 6 Mod. Rep., p. 31. The case of John Wilkes, decided in 1768, 19 State Trials, p. 1091. In this case Lord Mansfield said that he knew of no case where a person *convicted of a misdemeanor* had been admitted to bail without the consent of the prosecutor. Rex vs. Judd, Leach Crown Law, p. 484, decided in 1788. In this case the president of the Court of King's Bench in England observed, 'unless it appears upon the face of the commitment that the defendant is charged with *felony*, WE ARE BOUND to discharge him by the Habeas Corpus Act.' Case of Rex *v.* Marks, 3 East Rep. p. 165. Case of Regina *vs.* Badger, 4 Q. B. Rep. Ad. & El. p. 418, in which Lord Denman, as the organ of the Court, speaking of the prisoner and of his offer to give bail, observed: 'Standing charged with a *mis-* 'demeanor, O'Neal claims *the right of every man* 'so charged to be released from prison, and so 'admitted to bail on giving sufficient securities.' Case of the Wakefields, Burke's Trials, p. 376. Lastly the case of Linford and Fitzroy, 66 Eng. C. L. R., p. 242. Judge Meredith continued as follows:—]

"The statement of Lord Denman (in the last cited case) 'that for many years the received opinion and practice has been that all persons accused of misdemeanor whether com mon or otherwise, are entitled to be admitted to bail,' is strongly confirmed by the fact that although we have reason to believe the most diligent search has been made by the learned Crown Prosecutor, not a single case of misdemeanor has been cited in which bail was refused before conviction.....

"I shall now, in connection with the decisions of the English Courts, advert to the more important of the authorities cited by the learned Crown Prosecutor as tending to show that a distinction, under the Statute of Westminster, was made between enormous misdemeanors and common misdemeanors with respect to the right to be admitted to bail. The passage from the 15th Chapter of Hawkins' Pleas of the Crown, doubtless a standard authority, supports the distinction contended for by the Crown in this case; and the opinion of Serjeant Hawkins is quoted approvingly in Chitty's Criminal Law, and in Burns' Justice. It may, however, be observed that the limitation which Serjeant Hawkins suggests should be put upon the general words of the Statute, which are: that persons 'guilty of some other trespass for 'which one ought not to lose life nor member 'are replevinable,' has not the support of Lord Coke's commentary on the same statute, which Matthew Hale says he has transcribed; that the opinion of Serjeant Hawkins is expressed doubtingly, as appears by the words '*sed quere*' added to the most important part of it; that the authorities cited by the learned Serjeant were very old even at the time he wrote, the only reporter referred to by Hawkins being Keilway, of the time of Henry VIII; and that the last case tending to support the distinction made by Hawkins is the Queen *v.* Tracey, decided in the time of Queen Anne..... It is also to be recollected that the opinion of Serjeant Hawkins is founded exclusively upon the statute of Westminster, which is no longer in force in England or in this country; and it does seem to me that no one can interpret our own statute, according to the rules observed by Serjeant Hawkins in interpreting the statute of Westminster, without coming to the conclusion that, at least, no justice of the Peace can refuse bail in a case of misdemeanor.....

"Authorities were also cited as showing that the Court of Queen's Bench, in the plentitude of its power, may exercise an almost unlimited