202, where it is said: "They do not say that the section may not also apply to cases where a prisoner is discharged unconditionally upon the ground that the warrant on which he is detained shews no valid cause for his detention. They think, however, it can only apply when the second arrest is substantially for the same cause as the first, so that the return to the second writ of habeas corpus raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first." The object of the section is succinctly given in Short & Mellor's Crown Practice, p. 337, thus: "Provision is made against a person set at large upon habeas corpus being vexatiously committed again for the same offence." The language of Mellish, L.J., in 5 P. C., indicates, I think, that he was regarding the second arrest as involving substantially the same matters of investigation and of evidence as the first arrest; and that is manifestly not the case in the present inquiry, for here the second proceeding is to supplement and make good what was lacking in the first; so far from being vexatious, it is in the interest of justice and international comity that the charge should be further prosecuted.

But I think the better view is that taken by a Victoria Court, viz., that this statute does not apply to extradition proceedings. The preamble of the English Act shews that it is passed for the benefit of those of the King's subjects who are in custody, and it was held . . . in Re Gerhard, 27 Vict. L. R. 655, that the "offence" mentioned in sec. 6 must be limited to offences cognizable by a Court in some part of His Majesty's dominions, and, so far as the State of Victoria was concerned, an offence that could be tried and determined there. That is pertinent to the present extradition crime, which cannot be heard, tried, or determined in Canada or Ontario—but which may be tried in the proper Court of the United States upon and after the prisoner's surrender.

I think that Ex p. Benet, 6 Q. B. 481, is also an authority that the statute of Charles is not applicable to extra-territorial crimes, the perpetrators of which have taken refuge in England or her colonies, though the common law writ of habeas corpus may run in their favour. Indeed the remedy by means of this process is given at a certain stage expressly in sec. 12 of the Extradition Act of Canada, though it may, doubtless, run at any stage of the proceedings when illegal custody exists.