

STREET, J.:—The question intended to be raised upon the present application is whether a person who has been discharged upon habeas corpus in extradition proceedings, after having been committed to gaol by the Extradition Judge, can properly be again taken in custody under a new information and warrant under the Extradition Act, charging the same offence.

I have been unable to find any case in which a second arrest in such circumstances has been made, although I am inclined to think that in the Quebec case of *The United States v. Gaynor and Green* it was done, but I can find no report of the second proceedings.

There is nothing in the Extradition Act which seems to forbid it, and I cannot see why upon principle it is objectionable, for the alleged fugitive is not put upon his trial, in any sense, in the proceedings under the Act; those proceedings are more in the nature of a preliminary examination before a magistrate upon a criminal charge under the Criminal Code. In such proceedings it is by no means unusual for a prosecutor who has failed in procuring evidence upon a first charge, to lay a new information for the same charge upon the discovery of further evidence, notwithstanding the discharge of the prisoner by the magistrate upon the preliminary examination upon the first charge. Nor does it seem to be contrary to sec. 5 of the Habeas Corpus Act, 31 Car. II. ch. 2, upon which the applicant relies. That section has been interpreted by the Privy Council in *Attorney-General for Hong Kong v. Kwok-a-Sing*, L. R. 5 P. C. 179, at pp. 201-2, as applying only in two classes of cases, neither of which includes that which is found here, for the prisoner here, having been arrested upon a charge under the extradition Act, could not be admitted to bail; and he was discharged, not because of any defect in the warrant of commitment, but for lack of evidence to support the charge, so that the question to be determined upon a return to a writ of habeas is by no means necessarily the same as that determined by the Court of Appeal upon the former writ.

In order that an opportunity may be given to the authorities who are demanding the extradition of the prisoner to shew the grounds upon which the second information was laid and the second warrant issued, counsel for the prisoner accepts the convenient practice pointed out by Sir Henry James, the Attorney-General, in *Regina v. Ganz*, 9 Q. B. D.