decided in appeal in S. C., 148 N. Y. 67, which again was followed in 1896 in Grant v. Enfield, 11 N. Y. App. Div. 358.

On the other hand, cases rather in plaintiff's favour (but presenting features of aggravation beyond what exist in the case in hand) are Dempsey v. Pinora, 94 Ga. 420, and Hull v. Fond du Lac, 42 Wisc. 274. All these cases are not cited of course as authorities, but they shew that no fixed rules can be laid down in sidewalk litigation—and especially where the nature of the defect is such as is found here.

I would affirm the decision, without costs.

STREET, J., concurred.

MABEE, J., dissented, giving reasons in writing, and referring to Castor v. Uxbridge, 39 U. C. R. 113.

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FEBRUARY 23RD, 1906.

DIVISIONAL COURT.

## RE HARSHA.

*Extradition—Prisoner in Custody under Warrant—Release on Habeas Corpus—Re-arrest for Same Offence—New Evidence—Insufficiency of Evidence on Former Charge—Res Judicata—Nemo bis Vexari—Habeas Corpus Act—Inapplicability—Complaint — Affidavit—Information and Belief—Evidence before Commissioner—Information—Transmission to Minister of Justice.*

Application on behalf of Fred Harsha for a writ of habeas corpus, on the grounds: (1) that the prisoner was arrested a second time for the same offence after his release on habeas corpus; (2) that the matter was res judicata between the parties; (3) that the complaint against the prisoner was on information and belief only; (4) that no evidence was received by the Judge; and (5) that neither the information and complaint nor the warrant was transmitted to the Minister of Justice by the Judge.

See reports of decisions upon previous applications, ante, pp. 97, 155.

J. B. Mackenzie, for the applicant.

R. W. Eyre, for the State of Illinois.