

the damages would not be such as to conform to the rule laid down in *Miller v. Sarnia Gas Co.*, 2 O. L. R. 546. Defendants are trying to do here what a municipality could not do until the power was given which now appears in 3 Edw. VII. ch. 19, sec. 609.

There is no evidence of any contract or promise of any kind, nor does it follow that even if the city corporation might be held liable under *Denny v. Montreal Telegraph Co.*, 3 A. R. 628, as a general principle, they would not be excused for any accident occurring on a public holiday, on the principle of the decision in *Garfield v. City of Toronto*, 22 A. R. 128, that they are not liable for damages caused by an abnormal rainfall. However that may be, there is here no ground on which the third party notice can be supported, and it must be set aside with costs throughout payable by defendants.

The following cases may be referred to: *Township of Vespra v. Cook*, 26 C. P. 182; *The Englishman v. The Australia*, [1895] P. 212.

STREET, J.

JANUARY 30TH, 1906.

CHAMBERS.

RE HARSHA.

*Extradition—Discharge of Prisoner—New Information and Warrant—Re-arrest of Prisoner—Habeas Corpus—Rule Nisi.*

Application for a writ of habeas corpus to bring before the Court Fred. Harsha, who was in custody under a warrant issued, on or about the 23rd January, 1906, by the senior Judge of the County Court of York, as a Judge under the Extradition Act, upon an information alleging that the prisoner had committed forgery in the city of Chicago, in the State of Illinois, and was in the city of Toronto, in the province of Ontario, as a fugitive from justice.

In November, 1905, the prisoner was arrested upon a charge made in precisely the same terms under the Extradition Act; he was committed for extradition under that Act; he obtained a writ of habeas corpus, and was finally discharged by the Court of Appeal (ante 97).

J. B. Mackenzie, for the prisoner, contended that he was not subject to a second arrest upon the same charge.