judgment, after the proceedings set out ante 379, or in the alternative for a new writ of habeas corpus.

H. H. Dewart, K.C., and N. Sommerville, for the prisoner.

T. D. Cowper, Welland, for the State of New York.

RIDDELL, J.:— . . . After his escape Bartels eluded the vigilance of the authorities for some time, but was ultimately arrested and arraigned before a police magistrate for the city of Toronto, and, pleading guilty to the charge of escape, he was sentenced to 3 months' imprisonment. His term was shortened by a few days through the clemency of the executive, upon condition that he surrender himself to the custody of the sheriff of Welland. This has been done.

Upon application to me under the leave reserved, I suggested to the solicitor for the applicant that there might be difficulty in the way of considering the merits of the motion; and I granted leave to serve a notice in the alternative for judgment upon the motion already made, or for an order for a new writ of habeas corpus. This was done, and the matter argued before me at Osgoode Hall.

In my former memorandum I did not consider my power to deal with the application: see ante p. 380 ad fin. The doubt I then entertained has been strengthened by further consideration, and an examination of the few authorities on the point.

Production of the prisoner having been waived, it was not brought to the attention of the Court that the sheriff had brought him to Toronto, and I had no thought that he was anywhere else than in the common gaol at Welland— until I was informed by an officer of the Court that he had escaped. I then inquired of counsel for the prisoner where his client was, and was informed that he had been in Court during the morning, but that he was not in Court at that time. The argument proceeded, and at the conclusion . . . . judgment was reserved.

In law, it appears that upon the return of the writ, pending the hearing, the prisoner is detained under the writ and not under the authority of the original warrant: Rex v. Bethel, 5 Mod. 19. Whether this would be the case in the present instance, there having been no deliverance by the