

that the collector of customs at Windsor did duly arrest the said ship, but that she escaped from his custody, as appears from the telegram now shewn to me and marked exhibit C. hereto." The telegram is as follows: "Windsor, August 17, 1904. Tuttle arrested on Saturday but escaped later; am sending full report to department, Toronto. J. A. Smith, collector."

Some of the facts respecting the arrest of the "Tuttle" appear to be as follows:

On 13th August the following telegram was sent from the Attorney-General's office to the collector of customs at Amherstburg (not Windsor): "Arrest steam barge H. B. Tuttle on passing through channel there on warrant from Maritime Court at instance of public works department of Ontario."

On the same day a customs officer of the Amherstburg office went on board the "Tuttle," and shewed the master the telegram and "placed the ship under arrest." The vessel, however, proceeded for about two miles and then ran aground. The detailed statement of the customs officer in making the arrest is set forth in his affidavit. But he is silent as to the escape.

Neither the "full report" of the collector of customs at Windsor, nor a report from the collector of customs at Amherstburg, whose officer made the arrest, as to how the ship escaped from custody, has been furnished on this interlocutory application.

The full and consecutive proceedings affecting the arrest and release, the re-arrest and the escape of the ship, are therefore incomplete and unsatisfactory. But, from what appears, I think the fact of the arrest and improper release of the ship at French River is *prima facie* established, and that the onus of proving that the ship was lawfully released from custody by the collector of customs at French River, lies therefore on the owners.

Then as to the bond moved for by the Crown. I find that the correspondence between the solicitors shews that the solicitor for the owners, as late as 26th September, 1904, over a month after the alleged release by the collector of customs at French River, agreed to give a bond. I must, therefore, hold that the owners are bound to give the bond agreed upon. After the bond has been given and approved, an order for pleadings may issue.

Costs are reserved to the hearing.