

unnecessary here to consider, the Judge of the County Court of Welland, as extradition commissioner, issued his warrant under sec. 18 of the Extradition Act, R. S. C. 1906 ch. 155, for the committal of Bartels to prison for surrender to the United States.

On 27th June I granted a writ of habeas corpus, expressly stipulating that the production of the prisoner should be waived, and this waiver was expressly agreed to. On 4th July the case was argued before me, and I reserved judgment.

Being informed by an officer of the Court that Bartels had been in Toronto, and had during the time of the argument escaped from custody, I caused the registrar to require the sheriff of Welland, in whose custody the prisoner was, to produce the prisoner before me, whereupon the registrar was this morning informed that Bartels at noon yesterday had escaped from the sheriff, and had not yet been re-arrested. So much is before me officially. In addition, I have been informed by an officer of the Court that the sheriff of Welland brought the prisoner to Toronto at his request; that he brought him into Court at Osgoode Hall; that, being alone in the charge of him, he went to a closet, leaving his prisoner alone in the hall; that upon his emerging he found the prisoner had escaped. Whether these statements are true, I do not know judicially.

By the common law any one who is arrested and gains his liberty before he is delivered by due course of law is guilty of an escape, and any one who, being in lawful custody, frees himself from it by any artifice and eludes the vigilance of his keeper, is guilty of an offence in the nature of a high contempt, and punishable by fine and imprisonment: Russell on Crimes, vol. 1, ch. 30, p. 567. And our Criminal Code, R. S. C. 1906 ch. 146, sec. 190, provides that "every one is guilty of an indictable offence and liable to two years' imprisonment who, being in lawful custody . . . on any criminal charge, escapes from such custody.

Bartels has apparently treated with contempt the laws of the country in which he sought an asylum. Therefore, without considering the arguments advanced or my power to deal with the application, I retain the motion until he has been proceeded against for his violation of these laws, leave being reserved to apply to me upon a change of circumstances: see *Re Watts*, 3 O. L. R. 279, 1 O. W. R. 129, 133.